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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 369

THE SUSQUEHANNA POWER COMPANY,
APPELLANT,

vs.

STATE TAX COMMISSION OF MARYLAND

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND

FILED AUGUST 21, 1930

(35,291)

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SUPREME COURT OF THE UNITED STATES

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IN CIRCUIT COURT OF HARFORD COUNTY

Appeal of the SUSQUEHANNA POWER COMPANY from Decision of the State Tax Commission of Maryland in the Matter of the Assessment for Taxation of the Capital Stock of Said Company

PETITION AND ORDER THEREON—Filed Jan. 2, 1930

To the Honorable the Judges of said Court:

The petition of The Susquehanna Power Company, a corporation under the laws of Maryland, respectfully shows:

[fol. 5] I

That your petitioner is a corporation duly organized and formed under the laws of Maryland; having its principal office in Harford County, Maryland. In pursuance of the powers conferred upon it by the Maryland Act of 1908, Chapter 268, and otherwise, and under similar power and authority conferred upon it by the State of Pennsylvania, and especially in pursuance of a franchise conferred upon it by license of the Federal Power Commission authorizing and empowering it to develop a water power upon the Susquehanna River (under the designation of Project No. 405), your petitioner has constructed a dam and water power on the Susquehanna River, about eight (8) miles above Havre de Grace, said development consisting principally of the dam across the river, located partly in Harford and partly in Cecil counties and the power house and machinery thereof located at said dam in Harford County, and an extensive pool covering about ninety-one hundred (9,100) acres, formed by the damming of said river and extending up into the adjacent State of Pennsylvania, of which about fifty-nine hundred (5,900) acres are in Pennsylvania and thirty-two hundred (3,200) acres in Harford and Cecil counties, Maryland.

II

That in the year 1929 the State Tax Commission of Maryland, in assessing for State and County taxation for

said year the outstanding capital stock of your petitioner consisting of 245,500 shares, the taxes upon all or nearly all of which are payable in Harford County, notified your petitioner of a tentative assessment of six million dollars ($6,000,000) as the proposed valuation of said stock. Your petitioner protested such valuation and a hearing of said matter was had by said Commission subsequent to which, by order entered December 18th, 1929, said tentative assessment of six million dollars ($6,000,000) for said 245,500 shares was made final. Said assessment was arrived at by fixing a gross valuation of twenty-eight million seven hundred and twenty-six thousand one hundred and thirty-two dollars ($28,726,132) and deducting therefrom the assessment also determined by said Commission, of the real estate in Harford and Cecil counties owned by [fol. 6] your petitioner, leaving the net amount of six million dollars ($6,000,000) so fixed as the assessable value of your petitioner's stock.

III

That such assessment of your petitioner's said stock, the taxes upon which are required by law to be paid by your petitioner, is illegal and erroneous for the following reasons:

In the hearing of said matter your petitioner submitted to said Commission certain requests for rulings upon matters of law involved in the determination of the assessability of said stock and of the amount at which the same was properly assessable, if subject to such assessment; said prayers or requests for rulings being six in number, and a copy thereof marked "Exhibit A" being attached to this petition as part hereof. Said Commission refused and rejected all of said prayers or requests, except the second thereof, and in determining the assessability of said shares and the amount of said assessment, did not follow the legal principles laid down and stated in said requests, but arrived at said assessment in disregard of each and all of the same with the exception of the second of said prayers or requests, which they granted, in substance, as aforesaid.

As the result of rejecting said requests for such rulings on said questions of law, and following and applying con-

trary principles of law upon the questions so involved, said Commission arrived at an assessment greatly in excess of the true assessable value of said shares of stock, according to law, as will appear from a copy of said assessment and of the certificate thereof, both filed herewith as parts hereof and marked "Exhibits B and C."

Your petitioner therefore prays that a summons may issue to the State Tax Commission of Maryland (consisting of the three commissioners the Honorable Jesse D. Price, Edward O. Weant and Oscar Leser, their office being located in Baltimore City, Maryland); such summons to be in the form of a subpœna duces tecum requiring them to bring or produce in this court upon the hearing of this appeal the record of the aforesaid proceedings be-
[fol. 7] fore said Commission; and that such appeal may be heard by this Honorable Court upon a day to be designated by it, and that the action of the State Tax Commission in so valuing and assessing said shares of your petitioner's capital stock may be reversed and set aside, and your petitioner have such other and further relief as may be proper and appropriate in the premises.

And your petitioner, etc.
Chas. McHenry Howard, S. A. & F. R. Williams, Attorneys for Petitioner.

Duly sworn to by Stevenson A. Williams. Jurat omitted in printing.

Order

Ordered this 2nd day of January, 1930, by the Circuit Court for Harford County upon the aforesaid petition of appeal of The Susquehanna Power Company from decision of the State Tax Commission of Maryland, in the matter of
[fol. 8] the assessment for taxation of the shares of capital stock of said company, that summons be issued as prayed, and that the hearing of said appeal be and the same is hereby set for Friday, January 10th, 1930, at 10 o'clock A. M.

Walter W. Preston.

EXHIBIT A TO PETITION FOR APPEAL OF THE SUSQUEHANNA POWER COMPANY

BEFORE THE STATE TAX COMMISSION OF MARYLAND

In the Matter of the Assessment for 1929 of the Stock of the Susquehanna Power Company

The Susquehanna Power Company requests the State Tax Commission to rule, as matter of law:

1. That in determining the full value of the chattels held by or belonging to The Susquehanna Power Company in the State of Maryland, for the purpose of applying the minimum limitation requiring that the stock of said company shall not be valued at less than the full value of its real estate and chattels, real or personal, held by or belonging to it in the several counties and City of Baltimore, as required by Section 163 of Article 81 of the Code (1927), of Public General Laws, the turbine wheels, dynamos and other machinery installed by said company in its power-house and dam on the Susquehanna River, in Harford County, should be valued at their full value as machinery, without including in such valuation the cost and expense of installing the same or of adapting said power-house and dam to receive the same.

2. That in determining such full value of the chattels aforesaid for said purpose, said chattels should not be valued by a higher proportion of valuation than other chattels personal located in Harford County, are valued or assessed at.

[fol. 9] 3. That the turbines, dynamos and other machinery installed by said company in its said power-house and dam as well as the pool dam and power-house which have been assessed as real estate, constitute an essential or integral part of the "complete unit" constructed and erected by said company on the Susquehanna River under the license from the Federal Power Commission which has been offered in evidence at this hearing, and are therefore exempt from state and county taxation, because said company, in constructing and operating such unit, is acting as an agency or instrumentality of the Federal Government, and the value thereof cannot therefore be included, but

should be deducted, in the assessment of the stock of said company, by this Commission.

4. That said provision in Section 163 of Article 81 of the Code, requiring that in no case shall the capital stock of a corporation such as The Susquehanna Power Company, be valued in the aggregate for assessment at less than the full value of the real estate and chattels, real or personal, held by or belonging to such corporation in the several counties and City of Baltimore, is contrary to the provisions of the Constitution of Maryland, and void, and any assessment made at more than the fair value of such stock (from which is to — deducted the assessed valuation of the company's real estate in Maryland), because of such provision in the Mayland law, would deprive the owners of said stock or said company of their or its property without due process of law contrary to Article XXIII of the Declaration of Rights of the Maryland Constitution, and also contravene Article XV of the Declaration of Rights of the Maryland Constitution, requiring taxes to be levied and paid according to the actual worth, in real or personal property, of persons subject to assessment and taxation in said State.

5. That said provision in Section 163 of Article 81 of the Code is also contrary to the provisions of the Constitution of the United States and void, and any assessment made in pursuance thereof at more than the fair value of said stock, as last mentioned, would deprive said owners or said company of their or its property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

[fol. 10] 6. That no value can be given to the capital stock of The Susquehanna Power Company in excess of the value of the real estate and chattels, real or personal, for assessment, without including in such valuation the value of the franchise rights of the corporation granted to it under the license from the Federal Power Commission, and such value is not subject to assessment for taxation by the State of Maryland or any political subdivision thereof.

EXHIBIT B TO PETITION

On October 10, 1929 the State Tax Commission entered a gross tentative assessment against The Susquehanna

Power Company of $28,726,132. A credit for real estate assessment of $22,726,132 was allowed, leaving a net assessment of $6,000,000. To this assessment the company protested under date of October 23rd. A hearing was set and held on November 8, 1929, at 10:45 A. M., at which testimony was presented and prayers were offered. The prayers Nos. 1, 3, 4, 5 and 6 were rejected. Prayer No. 2 was granted as modified.

The gross tentative assessment of $28,726,132, or a net assessment on 245,500 shares—$6,000,000 was made final.

Dated December 18, 1929.

EXHIBIT C TO PETITION

18th December, 1929.

Hon. Stevenson A. Williams, Bel Air, Maryland.

DEAR SIR: I beg to hand you herewith a copy of a memorandum this day made by the State Tax Commission in the matter of the assessment of the shares of capital stock of The Susquehanna Power Company as of January 1, 1929. [fol. 11] The net assessment of $6,000,000 has been made final and will be certified to the proper taxing authorities.

Very truly yours, Thomas A. Murray, Jr., Secretary.

Enclosure.

January 2, 1930.

[fol. 12] STATE TAX COMMISSSION OF MARYLAND, BALTIMORE

Date of Notification of Assessment: October 11, 1929.

Received in Office of State Tax Commission March 15, 1929.

REPORT AS OF JANUARY 1, 1929, OF THE SUSQUEHANNA POWER COMPANY, 1000 CHESTNUT ST., PHILADELPHIA, PA.

1. Date of incorporation: Oct. 29, 1919. Place of incorporation: Maryland.

2. Nature of business conducted: Hydro-electric power.

3. Where is the main office of such corporation in this State actually situated for the transaction of business: 15 Courtland Street, Bel Air, Harford County, Md.

3a. Does corporation transact all or any part of its business in Maryland: All in Maryland.

4. Names and addresses of officers:
W. H. Taylor, Pres., 1000 Chestnut St., Phila., Pa.
A. V. R. Coe, Sec., 1000 Chestnut St., Phila., Pa.
W. E. Long, Treas., 1000 Chestnut St., Phila., Pa.
H. R. Kern, Asst. Treas., 1000 Chestnut St., Phila., Pa.

5. Directors: M. R. Bockius, C. E. Ingersoll, W. A. Law, H. G. Lloyd, Thos. Newhall, W. H. Taylor, S. F. Tyler, S. A. Williams, L. M. R. Willis, J. T. Windrim, J. E. Zimmerman.

[fol. 13] 6. Capitalization

	Par per share	Authorized No. of shares	Issued No. of shares
Common Stock Class A	N. P. V.	135,000	110,500
Common Stock (Class B)	N. P. V.	135,000	135,000
Other Classes		None	None
Total		270,000	245,500

7. Total bonded debt outstanding January 1, 1929: $36,000,000.00.*

8. On how much of the above debt has interest been paid during 1928: On entire amount.

9. Dividends declared in 1927 and 1928: None.

10. Net profits of the corporation (before deducting dividends or interest payments) for the year ending January 1, 1929: See answer to question 15.

---

* This Company is a guarantor of $36,000,000 par value of 5½% 50-Year First Mortgage Gold Bonds, dated February 1, 1926, issued by the Philadelphia Electric Power Company, a Pennsylvania corporation, under a joint Mortgage and Deed of Trust to Fidelity Trust Co., Trustee, executed by the Philadelphia Electric Power Company and The Susquehanna Power Company. The entire amount of $36,000,000 is issued and outstanding as of this date.

11. How arrived at: Double entry system of accounting on accrual basis in accordance with the Md. P. S. Comm. Classification of Ac-ounts.

12. Amount on January 1, 1929: $4,866,886.36.

13. Gross earnings from all sources, without deductions for year ending January 1, 1929: $2,239,320.30.

14. Sale of stock during year: No sales. Price: No sale, hence no price. Estimate of present value: See note 14e.

Note 14e. This company shows no gain nor loss from operation therefore no value attaches to the stock other than its book value which is $19,824 per share.

[fol. 14] 15. Statement of Income and Expenditures and Charges for Year 1928

(This information should be classified)

Income

Rental and Disbursement of operating Expenses	$2,237,109.27
Interest on Bank Balances	2,211.03
	$2,239,320.30

Expenditures and Charges

Operation and Maintenance	$6,165.22
Renewals and Replacements	119,794.82
Interest on Advances	2,113,360.26
	$2,239,320.30

16. (Copy of Balance Sheet)

Statement of Assets and Liabilities as of January 1, 1929

The Susquehanna Power Company

Balance Sheet as of December 31, 1928

Asset Accounts

Fixed Capital Accounts: Construction Work in Progress	$45,797,111.42
Investment Accounts: Capital Stock of Sundry Companies	1.00
Special Deposit Accounts: Other Special Deposits	11,750.00

Current Asset Accounts:		
Cash	$117,271.05	
Accts. Rec. from Affiliated Cos.	859,841.51	
Other Accounts Receivable	155,705.12	
		1,132,817.68
		$46,941,680.10

[fol. 15] Liability Accounts

Corporate Capital Liability Accounts:		
Capital Stock—		
110,500 Shares Class A Common Stock N. P. V.	$2,219,000.00	
135,000 Shares Class B Common Stock N. P. V.	2,647,886.36	
		$4,866,886.36
Current Liability Accounts:		
Acct. Pay. to Affil. Cos.	$41,943,924.10	
Other Accounts Payable	11,074.82	
		41,954,998.92
Reserve Accounts:		
Reserve for Renewals & Replacements		119,794.82
		$46,941,680.10

16a. Depreciation reserve on buildings:—$119,794.82.

17. Schedule No. 1

Statement of Net Worth

The Susquehanna Power Company

December 31, 1928.

Assets

Current Assets:		
Cash	$117,271.05	
Accts. Rec. from Affil. Cos.	859,841.51	
Other Accts. Receivable	155,705.12	
		$1,132,817.68

Special Deposit Accounts:		
Other Special Deposits	11,750.00	
Investment Accounts:		
Capital Stk. of Sundry Cos.	1.00	
		$1,144,568.68
Fixed Properties:		
Detail on Schedule No. 2		45,677,316.60
		$46,821,885.28

[fol. 16] Liabilities

Current Liabilities:		
Accounts Pay. to Affil. Cos.	$41,943,924.10	
Other Accts. Payable	11,074.82	
		41,954,998.92
Total Net Worth		$4,866,886.36

Schedule No. 2

The Susquehanna Power Company,

Fixed Capital as of December 31, 1928

Organization	$4.50
Land—$4,518,737.83 includes cost of relocation of C. & P. D. R. R. amounting to $3,770,119.21	4,518,737.83
Dams, Reservoirs and Water Conduits	13,069,340.86
Power Plant Structures	2,608,259.23
Turbines and Water Wheels	2,800,430.64
Electric Generators	2,209,122.67
Other Electric Equipment	2,442,142.58
Other Power Plant Equipment	339,078.91
Land	25,343.94
Right of Way	67,475.43
Transmission System Structures	33,426.53
Sub-station Equipment	8,098.99
Poles and Fixtures	263,097.86
Overhead Conductors	152,165.78
Overhead Telephone System	4,525.81
Underground Conductors	5,505.24
Overhead Conductors	282.00
Meters	336.33

Meter Installations	177.99
Other General Structures	12,059.71
Other General Equipment	7,807.71
Eng. & Supt. during construction	3,305,737.73
General Office and Clerks' Salaries during construction	127.50
General Office and Clerks' Expenses during construction	289.42
[fol. 17] Office Supplies and Expenses during construction	4,297.19
Law Expenditures during construction	37,510.47
Injuries and Damages during construction	179.06
Insurance during construction	382,437.81
Taxes during construction	48,433.01
Interest during construction	3,322,733.23
Other Expenditures during construction	4,327,316.12
Land and Rights	5,800,629.34
Investment	$45,797,111.42
Less Accrued Depreciation	119,794.82
Investment in Fixed Capital depreciated to December 31, 1928	$45,677,316.60

Values cannot be accurately given and allocated until after final action is taken by the Federal Power Commission.

18. Amounts of inventories in 1928: None.

19. On what basis were inventories taken, whether at cost of market value, or other basis: No inventory taken.

19a. State whether any merchandise, materials or supplies were omitted from inventories; give particulars: No inventory taken.

20. Assessed value for 1929 of real estate owned by the corporation in Maryland, accompanied by certificate for the same from the Appeal Tax Court of Baltimore City or County Commissioners of the county where such real estate is located—from which appeals have been taken and are pending: $22,726,132.00.

21. Baltimore City Stock returned under Code, Art. 81, Sect. 168, owned by the corporation at the time of making this report and which was owned by it on January 1, 1929, and for six months continuously theretofore; and for which the certificate of the City Register of Baltimore is filed herewith, showing total par value of: None.

[fol. 18] 22. Deductible shares of stock of banks or other corporations of this State, returned under Code, Art. 81, Sect. 168, and which are owned by the corporation at the time of making this report and were owned by it on January 1, 1929, and for six months continuously theretofore: None. Description: None.

23. If said corporation has returned any shares under Question 22, state whether the same are owned by the corporation for which you are making this return, or are held by such corporation as a security for any loan or as a collateral security for any payment or other purpose, or as trustee or in any other fiduciary capacity: None.

H. R. Kern, Asst. Treasurer. (Corporate Seal.)

Affidavit

STATE OF PENNSYLVANIA,
County of Philadelphia, To wit:

On this 14th day of March, 1929, before me, the subscriber, a Notary Public of the State of Maryland, in and for the said county or city, personally appeared H. R. Kern, the assistant treasurer of the within-named corporation, and made oath in due form of law that the foregoing is a true return of all the property of every kind and description within the State of Maryland, owned or held by the said corporation on January 1, 1929, and that he has valued the property at its full cash value without reference to a forced sale; and that all statements contained in this schedule and the list of stockholders filed therewith are full, correct and true, without evasion or mental reservation whatsoever.

As witness my hand and official seal.

James Amenthe, Notary Public. (Commission expires January 21, 1931.) (Notarial Seal.)

(NOTE.—No entries are to be made on this page by the officers of the corporation.)

[fol. 19] Assessment

Aggregate Assessment	$28,726,132
Credits:	
Real Estate	22,726,132
Net Assessment	6,000,000
245,500 shares at $24.43	$6,000,000

Assessment entered 10/10, 1929.

(Signed) Jesse D. Price, Edward O. Weant, Oscar Leser, Commissioners.

No change.
December 18, 1929.

Distribution

Harford County: No. of shares, 245,500; assessment, $6,000,000.
Assessment subject to State Tax, $6,000,000.
Tax, $15,444.00.

1929.

Share Corporations: Public Service.

The Susquehanna Power Company,
1000 Chestnut Street,
Philadelphia, Pa. Annapolis, Md.

To the State of Maryland, Dr.

This bill payable when rendered
Interest after October First
Penalty after November First

	Assessment	Tax
State Tax of 25-74/100 c. per $100 on net aggregate assessment on shares of stock amounting to $6,000,000		$15,444.00
Penalty—10%		.....
Interest		.....
Penalty for failure to file schedule within time prescribed by law		.....
Total		$15,440.00

Make checks payable to Treasurer of Maryland and return bill.

[fol. 20] (Copy)

(Banks, Financial Corporations, and Public Service Corporations)

State Tax Commission of Maryland, 504 Union Trust Building, Baltimore, Md.

October 11, 1929.

To the Susquehanna Power Company, 1000 Chestnut St., Philadelphia, Pa.:

This is to notify you that the following assessment has been made on the shares of the corporation for the current year, and that the same will become final and conclusive unless sufficient reasons for a change therein shall be presented to the Commission within fifteen (15) days from this date. No change will be made in an assessment which has become final by reason of the lapse of the fifteen day period without protest.

State Tax Commission of Maryland. Thos. A. Murray, Jr., Secretary.

.....shares at $..... per share	$
Aggregate share valuation	$28,726,132
Credits:	
Real Estate, $22,726,132	22,726,132
Net aggregate assessment—	
245,500 shares at $24.43+.....	$6,000,000
Assessed value Baltimore City Stock $.....	

[fol. 21] Before State Tax Commission

October 23, 1929.

In the Matter of the Proposed Assessment of the Shares of Stock of the Susquehanna Power Company for the Year 1929

State Tax Commission of Maryland, 504 Union Trust Bldg., Baltimore, Md.

Gentlemen: The Susquehanna Power Company hereby protests the proposed assessment upon the shares of stock

of the corporation amounting to a net aggregate assessment on 245,500 shares in the sum of $6,000,000, at the rate of approximately $24.43 per share, and as reasons for this protest assigns the following:

1. Because the assessment of October 11, 1929, is without warrant of law and is void.

2. Because the said assessment is based upon values given to franchises and rights exercised by the corporation as a licensee under a license granted by the Federal Power Commission of the United States of America pursuant to Acts of Congress of the United States.

3. Because the said assessment is based upon values given to franchises and rights exercised by others as parties to contracts and agreements with the said corporation outside of the State of Maryland and pursuant to licenses and authorizations granted by the Government of the United States of America and of the Commonwealth of Pennsylvania.

4. Because the said assessment is based upon values given to flowage rights within the State of Maryland in the Susquehanna River which are not subject to taxation by the State of Maryland.

5. Because the said assessment is upon property and franchises oft he corporations which are exempt from taxation by the laws of the State of Maryland.

[fols. 22-25] 6. Because the said assessment is based upon values given to flowage rights in the Susquehanna River outside of the State of Maryland, to wit, in the Commonwealth of Pennsylvania.

7. Because the authority for the said assessment, to wit, Section 15 of Chapter 226 of the Laws of Maryland, approved April 2, 1929, is invalid in that it conflicts with the provisions of the Constitution of the United States.

8. Because the tax so imposed by the said assessment upon the owners of the shares of stock of the corporation is arbitrary, discriminatory and unlawful as a direct tax

upon such personal property, and is void as to nonresident owners.

Very respectfully yours, The Susquehanna Power Company, by S. A. Williams, Director, Attorney and Agent.

Duly sworn to by Stevenson A. Williams. Jurat omitted in printing.

[fol. 26] BEFORE STATE TAX COMMISSION

Appeal of THE SUSQUEHANNA POWER COMPANY from Decision of the State Tax Commission of Maryland in the Matter of the Assessment for Taxation of the Capital Stock of Said Company

PETITION FOR APPEAL TO THE COMPTROLLER OF THE TREASURY AND THE TREASURER OF THE STATE OF MARYLAND

To the Honorable the Comptroller and Treasurer Aforesaid:

The petition of The Susquehanna Power Company, a corporation under the laws of Maryland, respectfully shows:

I

That your petitioner is a corporation duly organized and formed under the laws of Maryland; having its principal office in Harford County, Maryland. In pursuance of the powers conferred upon it by the Maryland Act of 1908, Chapter 268, and otherwise, and under similar power and authority conferred upon it by the State of Pennsylvania, and especially in pursuance of a franchise conferred upon it by license of the Federal Power Commission authorizing and empowering it to develop a water power upon the Susquehanna River (under the designation of Project No. 405), your petitioner has constructed a dam and water power on the Susquehanna River, about eight (8) miles above Harve de Grace, said development consisting princi- [fol. 27] pally of the dam across the river; located partly in Harford and partly in Cecil counties and the power house

and mach-nery thereof located at said dam in Harford County, and an extensive pool covering about ninety-one hundred (9,100) acres formed by the damming of said river and extending up into the adjacent State of Pennsylvania, of which about fifty-nine hundred (5,900) acres are in Pennsylvania and thirty-two hundred (3,200) acres in Harford and Cecil counties, Maryland.

II

That in the year 1929 the State Tax Commission of Maryland, in assessing for State and County taxation for said year and outstanding capital stock of your petitioner consisting of 245,500 shares, the taxes upon all or nearly all of which are payable in Harford County, notified your petitioner of a tentative assessment of six million dollars ($6,000,000) as the proposed valuation of said stock. Your petitioner protested such valuation and a hearing of said matter was had by said Commission, subsequent to wh-ch, by order entered December 18th, 1929, said tentative assessment of six million dollars ($6,000,000) for said 245,500 shares was made final. Said assessment was arrived at by fixing a gross valuation of twenty-eight million seven hundred and twenty-six thousand one hundred and thirty-two dollars ($28,726,132) and deducting therefrom the assessment, also determined by said Commission, of the real estate in Harford and Cecil counties owned by your petitioner, leaving the net amount of six million dollars ($6,000,000) so fixed as the assessable value of your petitioner's stock.

III

That such assessment of your petitioner's said stock, the taxes upon which are required by law to be paid by your petitioner, is illegal and erroneous for the following reasons:

In the hearing of said matter your petitioner submitted to said Commission certain requests for rulings upon matters of law involved in the determination of the assessability of said stock and of the amount at which the same was properly assessable, if subject to such assessment; said [fols. 28-30] prayers or requests for rulings, being six in

number, and a copy thereof marked "Exhibit A" being attached to this petition as part hereof. Said Commission refused and rejected all of said prayers or requests, except the second thereof, and in determining the assessability of said shares and the amount of said assessment, did not follow the legal principles laid down and stated in said requests, but arrived at said assessment in disregard of each and all of the same, with the exception of the second of said prayers or requests, which they granted, in substance, as aforesaid.

As the result of rejecting said requests for such rulings on said questions of law, and following and applying contrary principles of law upon the questions so involved, said Commission arrived at an assessment greatly in excess of the true assessable value of said shares of stock, according to law, as will appear from a copy of said assessment and of the certificate thereof, both filed herewith as parts hereof and marked "Exhibits B and C."

Your petitioner therefore prays that the said Comptroller and Treasurer shall consider its appeal, and that the valuation and assessment of the capital stock of your petitioner by the said State Tax Commission may be declared erroneous and ought to be changed, and shall change the same accordingly, and that this appeal may be heard upon a day to be designated by said Comptroller and Treasurer, and that your petitioner may have such other further relief as may be proper and appropriate.

And your petitioner, etc.

(Signed) Chas. McH. Howard, (Signed) S. A. & F. R. Williams, Attorneys for Petitioner.

[fol. 31] EXHIBIT B. TO PETITION FOR APPEAL

On October 10, 1929, the State Tax Commission entered a gross tentative assessment against The Susquehanna Power Company of $28,726,132. A credit for real estate assessment of $22,726,132 was allowed, leaving a net assessment of $6,000,000. To this assessment the company protested under date of October 23rd. A hearing was set and held on November 8, 1929, at 10.45 A. M., at which testimony was presented and prayers were offered. The Pray-

ers Nos. 1, 3, 4, 5 and 6 were rejected. Prayer No. 2 was granted as modified.

The gross tentative assessment of $28,726,132, or a net assessment on 245,500 shares—$6,000,000 was made final.

Dated December 18, 1929.

It is Hereby Certified, That the foregoing is a full, true and complete transcript of the Record of Proceedings of the State Tax Commission of Maryland in the matter of the valuation and assessment of The Susquehanna Power Company for the year 1929.

As Witness my hand and the seal of the State Tax Commission of Maryland, this 8th day of January, 1930.

Thomas A. Murray, Jr., Secretary. (Seal.)

[fol. 32] State of Maryland, State Tax Commission, Union Trust Building, Baltimore

It is hereby certified, That the attached is a true copy of the report of The Susquehanna Power Company as of January 1, 1927, filed in the office of the State Tax Commission of Maryland on March 15, 1927.

As Witness my hand and the seal of the State Tax Commission of Maryland, this 29th day of January, 1930.

Thomas A. Murray, Jr., Secretary. (Commission Seal.)

State Tax Commission of Maryland, Union Trust Building, Baltimore

Received in Office of State Tax Commission March 15, 1927.

Date of Notification of Assessment: ——, 1927.

Report as of January 1, 1927, of The Susquehanna Power Company, 1000 Chestnut Street, Philadelphia, Pa.

1. Date of incorporation, Oct. 29, 1919; place of incorporation, Maryland.

2. Nature of business conducted: Contemplated Hydro-Electric Power.

3. Where is the main office of such corporation in this State actually situated for the transaction of business? 15 Courtland Street, Bel Air, Harford County, Md.

[fol. 33] 3a. Does corporation transact all or any part of its business in Maryland?

4. Names and addresses of officers:
President, W. H. Johnson,
Secretary, J. B. McCall, Jr.,
Treasurer, W. E. Long,
1000 Chestnut St., Philadelphia, Pa.

Directors

M. R. Bockius,
C. E. Ingersoll,
W. H. Johnson,
W. A. Law,
H. G. Lloyd,
J. R. McAllister,
Thos. Newhall,
S. F. Tyler,
J. T. Windrim,
L. M. R. Willis,
S. A. Williams

Capitalization

	Par per share	Authorized No. of shares	Issued No. of shares
Common Stock, Class A	N. P. V.	135,000	110,500
Common Stock, Class B	N. P. V.	135,000	135,000
Other Classes		None	None
Total		270,000	245,500

7-16a. Blank.

17. See Note "B".

18-21. Blank.

21. Baltimore City Stock returned under Code, Art. 81, Sec. 168, owned by the corporation at the time of making this report and which was owned by it on January 1, 1927, and for six months continuously theretofore; and for which [fol. 34] the certificate of the City Register of Baltimore is filed herewith, showing total par value—None.

22. Deductible shares of stock of banks or other corporations of this State, returned under Code, Art. 81, Sec. 168, and which are owned by the corporation at the time of making this report and were owned by it on January 1, 1927, and for six months continuously theretofore—None.

23. If said corporation has returned any shares under question 22, state whether the same are owned by the corporation for which you are making this return, or are held by such corporation as a security for any loan or as collateral security for any payment or other purpose, or as trustee or in any other fiduciary capacity—None.

W. E. Long, Treasurer. (Corporate Seal.)

Date: March 14th, 1927.

Affidavit

STATE OF PENNSYLVANIA,
County of Philadelphia, To wit:

On this 14th day of March, 1927, before me, the subscriber, a Notary Public of the State of Pennsylvania, in and for the said county or city, personally appeared W. E. Long, the treasurer of the within-named corporation, and made oath in due form of law that the foregoing is a true return of all the property of every kind and description within the State of Maryland, owned or held by the said corporation on January 1, 1927, and that he has valued the property at its full cash value without reference to a forced sale; and that all statements contained in this schedule and the list of stockholders filed therewith are full, correct and true, without evasion or mental reservation whatsoever.

As Witness my hand and official seal.

James Amenthe, Notary Public. (Notarial Seal.)

(NOTE.—No entries are to be made on this page by the officers of the corporation.)

[fol. 35] Assessment

Aggregate assessment	$733,905.
Credits—Real Estate	733,905.
	Balanced

Assessment entered 5/31/1927.

(Signed) Jesse D. Price, J. Enos Ray, Commissioners.

Distribution

Harford County—Number of shares, 245,500.
Incorporated Town—Bel Air—245,500 shares.

The Susquehanna Power Company, Tenth & Chestnut Streets, Philadelphia, Pa.

August 1, 1927.

Mr. Thomas A. Murray, Jr., Secretary State Tax Commission, Union Trust Building, Baltimore, Md.

DEAR SIR: We acknowledge receipt of your letter of July 26, inquiring as to the exact nature of business conducted by this company and whether or not any business was transacted during the year 1926.

In answer to your inquiry, we wish to state that this company, The Susquehanna Power Company, can hardly be said to have conducted any business during the time mentioned. It has been and is now engaged in the develop-[fol. 36] ment of a hydro-electric project on the Susquehanna River and, aside from the prosecution of construction work, its activities were confined to the purchase from various individuals in the State of Maryland of certain real estate and water rights necessary or which will become necessary to the final completion of this hydro-electric development. Throughout the period of construction work, which will continue until some time in the year 1928, this company has found it possible to rent or lease certain houses, buildings or farms which are not immediately needed for the construction work. The total rents thus collected have amounted in the aggregate for the year 1926 to approximately $8,000.00. Its expenditures for land, etc., acquired during construction are charged to fixed capital. The income from rents, etc., is credited to fixed capital. This company has not, of course, been able to produce or sell any power as yet and will not be able to do so until its construction work is completed.

Very truly yours, (Signed) W. E. Long, Treasurer.

The Susquehanna Power Company Capital Stock Report

Maryland State Tax Commission

(Due March 15, 1927)

NOTE A:

Answer to Questions 7 to 11, inclusive:

The total bonded debt outstanding January 1, 1927, is $36,000,000, for the payment of which the properties of

this company and the Philadelphia Electric Power Company are jointly mortgaged; the responsibility of each company to the other bring approximately that proportion of the total issue represented by the expenditures which will be made on the property of each company, respec- [fol. 37] tively. This company's proportion cannot be ascertained until the completion of the Conowingo Project.

Interest on the entire $36,000,000 has been paid during the year 1926 out of advances by the trustee under the mortgage from principal.

There have been no dividends declared in 1925 and 1926.

This company has no net profits for the year ending January 1, 1927.

Note B:

Answer to Questions 12 to 20, inclusive:

These questions are not applicable to the company in its present situation.

The company is engaged in the construction of its dam and power house on the Susquehanna River to be known as the Conowingo Project. The construction will not be completed until some time in 1928.

In the meantime the company conducts no operation and has no earnings.

Its expenditures, rents and interest are charged during construction to fixed capital.

This company's capital stock consists entirely of no par value shares which were issued by the company several years ago; the amount of issue remaining unchanged. All of the stock of this company was transferred on the books during the year to Philadelphia Electric Power Company in order that the latter company might have full control of all of the company's physical assets. Philadelphia Electric Power Company and its affiliated companies are supplying all of the construction money. This construction money will eventually be represented in part debts to the affiliated companies and probably in part by capital stock. Until accounts of the construction and until the approval of the company's accounts by the Public Commissions having jurisdiction thereof, no final division of capitalization between capital stock and liabilities can be made.

All of the company's property is fixed property, consisting of water rights, rights of way, lands and interests in

land. All of the land, buildings and equipment for con-
[fol. 38] structing the company's dam and power plant have been locally assessed and without its said land, buildings, equipment, etc., so locally assessed, the stock of this company has no value. Certificates of such local assessment issued by the Commissioners of Harford and Cecil Counties, respectively, are filed herewith. The only assets not belonging to the class of fixed assets and locally assessed, are the following:

Stock of Delta Water Power Co. (Pa. Corp.)	$13,590.00
Advances to affiliated companies (Pa. Corp.)	60,829.83
Capital stock of affiliated companies (Pa. & Md.)	1.00
Cash and other assets	23,563.76
Total	$97,984.59

Offices of County Commissioners of Harford County, Bel Air, Maryland

March 11,1927.

This Is To Certify, In pursuance of Section 151, Chapter 178, Laws of Maryland, 1878, that Susquehanna Power Company is assessed on the Tax Books in Harford County for Real Estate to the amount of $669,874.00, and for Personal Estate to the amount of $—. Total, $—.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said County Commissioners, this 11th day of March, in the year 1927.

J. M. Bosley, Clerk. (Seal.)

[fols. 39-44] Before State Tax Commission of Maryland

Statement of Evidence

[fol. 45] Thereupon, Jesse V. Sealy, a witness of lawful age, being produced on behalf of The Susquehanna Power Company, first being duly sworn, testified as follows:

Direct examination.

(By Mr. Howard:)

Q. Tell the Commission your occupation and your place of residence?

A. My residence is at Lawndowne, Pennsylvania; and I am an accountant for The Susquehanna Power Company.

(Mr. Howard:) Will the Commission loan us the original return that was made?

(Note)—This return was produced and handed to Mr. Howard.

(Mr. Howard:) I will now hand this original return to the witness.

(Mr. Robinson:) Is this the report that was made to the State Tax Commission?

(Mr. Howard:) This is the report upon which our assessment is supposed to have been made. It was handed to me by the Chairman of the Commission.

Q. Will you look at the paper I now hand you and say what it is?

A. It is the report of The Susquehanna Power Company as of January 1st, 1929, made to the State Tax Commission of Maryland.

[fol. 46] Q. Are you familiar with the data that goes to make up that report?

A. I am——

Q. Did you aid in getting it up?

A. I did.

Q. Did you verify the various answers there?

(Mr. Robinson:) Did he get it up or only assist in getting it up?

Q. Who was responsible for getting up this report?

A. It was prepared under my direction, and I was responsible for it.

Q. And you are familiar with the various items in that report?

A. Yes, sir.

Q. You have checked them up with the company's book?

A. They are in correspondence with the company's books.

Q. Are these items true and correct and in accordance with the company's books?

A. Yes, sir; they are.

Q. This report shows the amount of stock outstanding, don't it?

A. Yes, sir.

Q. It shows the amount of each class of stock?

A. Yes, sir.

Q. And shows those items correctly?

A. Yes, sir.

(Mr. Robinson:) We haven't any copy of that and don't know what you are talking about.

(Mr. Howard:) We are talking about a report made in accordance with the law.

(Mr. MacNabb:) But he does not answer how much these items are.

(Mr. Price:) This report is on file and I don't see how this is helping us much.

(Mr. Howard:) You don't want to know what his mailing address is?

[fol. 47] (Mr. Robinson:) No, sir; but we would like to see this original report filed with the Commission.

(Mr. Howard:) It was just handed to me by the Chairman of the Commission, and I handed it to the witness.

Q. So that the statements in that report are correct according to the books of the company, to the best of your knowledge and belief?

A. Yes, sir; they are.

Q. Now, part of your report, Schedule No. 1, contains a statement of net worth, you have verified those figures from the books of the company?

A Yes, sir; that statement has been verified with the company's books.

Q. Now, Schedule No. 2 is called a statement of fixed capital as of December 31, 1928; that would be the same as January 1st, 1929?

A. Yes, sir.

Q. There was no difference between those two dates?

A. No, sir.

Q. And those figures show the value, cost of what?

A. That is the cost or investment of the company in the accounts indicated.

Q. It shows the actual investment made up to that time in acquiring or constructing the various items enumerated?

A. Yes, sir.

Q. Are those account kept in accordance with any regulations or methods?

A. Yes, sir; they are kept in accordance with the requirements of the Public Service Commission.

(Mr. Howard:) That is all I wish to ask this witness.

Cross-examination.

(By Mr. Robinson:)

Q. You say that you prepared this report?

A. Yes, sir; I said it was prepared under my direction.

[fol. 48] (Mr. Howard:) By that you mean that you had some one to assist you with the arithmetical work?

(The Witness:) Yes, sir.

Q. What do you mean when you say that it was prepared under your directions?

A. My assistants made up statements and I examined and verified them and prepared the report.

Q. They were made up by your assistants and verified by you?

A. Yes, sir.

Q. This schedule No. 2 shows a fixed investment of $45,677,316.60?

A. That is the investment less depreciation to December 31, 1928.

Q. How much depreciation went into that?

A. The depreciation is $119,794.82.

Q. That is less depreciation?

A. Yes, sir; and the total amount is $45,677,313.60.

(Mr. Howard:) That is the net after taking off the depreciation?

(The Witness:) Yes, sir.

(Mr. Howard:) And the amount taken off was $119,794.82?

(The Witness:) Yes, sir.

Q. What do your books show as the amount of the investment upon which the company claims a right to earn seven per cent?

(Mr. Howard:) Does that refer to any order?

(Mr. Archer:) An order already in the case, an order of the Public Service Commission, and filed here in this case.

(Mr. Robinson:) Do you understand my question?

[fol. 49] A. Yes, sir; the amount is $45,797,111.42.

Q. That is before any depreciation is taken off?

A. Yes, sir.

(Mr. Howard:) It is the same item plus the depreciation, isn't it?

(The Witness:) Yes, sir.

(Mr. Weant:) What are the figures?

(The Witness:) The investment before depreciation is $45,797,111.42, from which is deducted a depreciation of $119,794.82, leaving an investment of $45,677,316.60.

Q. Did you understand the question that I asked you?

A. Yes, sir.

Q. I asked you what was your statement to the Public Service Commission as to the value of the investment upon which the company desired a return of seven per cent; what was the value placed upon it at that time?

A. I don't have the statement to the Public Service Commission here, and without the report that was made to the Public Service Commission I don't see how I can answer that.

(Mr. Howard:) Did you use the figures established for the Public Service Commission as a basis for your return here?

(The Witness:) No, sir. Both of the reports, this one to the State Tax Commission and also the one to the Public Service Commission, I presume report as an investment $45,797,111.42. Of course, I haven't the report to the Public Service Commission before me——

(Mr. Robinson:) We don't want any presumptions; if you can't answer the question, just say so.

(Mr. Williams:) He says that he cannot answer it without the report to the Public Service Commission.

(Mr. Mason:) I don't think the figures used then were [fol. 50] the same as used in this report; the figures then were as of December 31st, 1927. That was the basis used by the Commissioners of the two counties plus certain additonal figures.

Q. Have you the books of the company here?

A. No, sir.

Q. What do the books show as to the value of the machinery of The Susquehanna Power Company?

(Mr. Howard:) The books ordinarily show the cost of the machinery; you said "value."

(Mr. Robinson:) I want to know what they are worth up there?

A. They show the following items: Turbines and water wheels, $2,800,430.64; electric generators, $2,209,122.67; other electrical equipment, $2,442,142.58——

Q. What are you reading from?

A. Schedule No. 2 attached to the report filed with the State Tax Commission as of January 1st, 1929.

Q. Go ahead, then?

A. Other Power Plant Equipment and additional items, $339,078.91; Meters, $336.33; Other General Equipment, $7,807.71—making a total of $7,798,918.84—representing the company's investments in those accounts.

Q. What does "power plant structures" mean?

A. Buildings.

Q. Now, you gave us an exhibit as of September 30th, 1928, at the last hearing, in which you placed a value on the machinery of $8,131,341.43, which is correct?

A. That is not the value—that is the investment in turbines, waterwheels, electric generators and other equipment, and includes, in adidtton to the company's investment in those accounts as I have given them to you, a proportion of the construction fee and administration expenses, which are carried in another account in this report.

Q. Why do you say that?

A. Because that is the way they appear on the company's books.

[fol. 51] Q. But you haven't those books here with you?

A. No, sir.

Q. Then how do you remember that?

A. In this way—I am very familiar with the company's books over a long period of time, and further the statement which you gave me—this exhibit on page four—has a detail of how this figure of $8,131,341.43 is made up. It shows that this amount contains something in the neighborhood of $600,000.00 of construction fees and administration expenses.

Q. That all goes into the value of the property, doesn't it?

A. That is an element of our investment in the property.

Q. There is no dispute about this being one of those reports that you furnished at the other hearing, is there?

A. No, sir.

Q. You got up those figures?

A. Yes, sir—that is as far as it had anything to do with the statement of the company's investment in that property.

Q. Do you know of the lease between The Susquehanna Power Company and the Philadelphia Electric Company?

A. Yes, sir.

Q. Do you know what is the amount of rental to be paid The Susquehanna Power Company?

A. Yes, sir—I know the contract in a general way.

Q. Doesn't that lease provide for The Susquehanna Power Company to be paid not less than $4,030,000.00 per year?

A. Not that I recall.

(Mr. Howard:) I find no such provision in the lease I have, and you are asking this witness the details of a legal document—there are mortgages and leases, and I don't think this witness can testify about them.

(Mr. Robinson:) This witness is an accountant and understands all about the books of the company—he made up this statement and he is an expert witness. Now I am [fol. 52] asking him if he knows what rent The Susquehanna Power Company receives from the Philadelphia Electric Company.

(The Witness:) I don't recall the lease containing any such a provision.

Q. Do you know anything about the receipts of The Susquehanna Power Company?

A. Yes, sir.

Q. What are they?
A. During the period covered by this report?
Q. No—I mean at this time—1929?

(Mr. Howard:) What relevancy has the receipts at this time?
(Mr. Robinson:) Do you object to the question?
(Mr. Howard:) Yes, sir.
(Mr. Robinson:) I will withdraw that question.

Q. Do you know anything about the lease of the property of The Susquehanna Power Company?
A. I know of it in a general way.
Q. You know that it is leased?
A. I know the contents of the lease in a general way.
Q. Do you know what the Philadelphia Electric Company has guaranteed to pay The Susquehanna Power Company per year as a minimum?
A. I don't know any minimum—my recollection is that it provides for a return rate of seven per cent per annum.
Q. Doesn't it provide for a minimum at all?
A. Not that I recall.
Q. There is a provision in every lease that I have ever seen providing not for a fixed return, but fixing a certain minimum rent?
A. The rent is seven per cent on the investment.
[fol. 53] Q. No—that is not it?
A. Without the lease before me I am at a disadvantage.

(Mr. Howard:) We have filed the lease.
(Mr. Robinson:) This lease that I have here—I have never seen any different one—provides a minimum of $4,030,000.00 is to be paid to The Susquehanna Power Company by the Philadelphia Electric Company.

Q. You are the bookkeeper for the company, are you not?
A. I don't recall any such provision in the lease. It may be there, but I don't recall it.
Q. May I show it to you?
A. Yes, sir.
Q. Here it is?
A. Is this the lease?

(Mr. Robinson:) It is a copy furnished by the company.

(Mr. Howard:) We are willing to agree that the lease and mortgage filed in the other case shall be considered in this case.

(The Witness:) If this is what is in there, I don't recall seeing it in what I have known as a copy of the lease between the Philadelphia Electric Company and The Susquehanna Power Company.

Q. Where is it?

A. In the office in Philadelphia.

Q. You have nothing here at all on that?

A. No, sir.

(Mr. Robinson:) This is a copy of the lease that was filed with the Public Service Commission of Pennsylvania.

(Mr. Howard:) Why can't we agree ot use the copies of the mortgage and lease that were filed previously in this case; just refile them at this time?

(Mr. Price:) Is there any dispute about that being a copy of the lease?

[fol. 54] (Mr. Mason:) A number of changes were made in the provisions of that lease after it was filed with the Commission; there are three commissions known in this matter, the Public Service Commissions of Pennsylvania and Maryland and the Federal Power Commission; my recollection is that there was some change made in that provision about the rental.

(Mr. Howard:) This may not be the final lease.

(Mr. Robinson:) It was filed in 1929.

(Mr. Mason:) That is what was supposed to be filed; I would have to see it to know.

(Mr. Price:) Is there any dispute about that being the final lease?

(Mr. Mason:) There seems to be some dispute about that being the final copy, but the only difference in the final draft of the lease is that there is no lump minimum sum stated as a rental. The rental in the final copy is a combination of total expenses plus seven per cent upon the actual liquidated investment in the project.

(Mr. Williams:) My recollection is that the fixed amount was changed by the Commission.

(Mr. Robinson:) If it was by a Commission, shouldn't he know it?

(By Mr. Weant:)

Q. Don't your books show the income for 1928?

A. Yes, sir.

Q. Don't that include the rental?

A. Yes, sir.

Q. Didn't you bring your books along to show what the income was?

A. No, sir; in the report there is a statement of the income and expenditures. The rent received during 1928 amounted to $2,237,109.27.

Q. That was the rent that you did receive in 1928?

A. Yes, sir.

[fol. 55] Q. That paid you in full?

A. Yes, sir; that was all that was earned in that period.

(By Mr. Robinson:)

Q. What time did you begin operations in 1928?

A. The first unit was put into operation in March, 1928.

Q. That was during the construction period?

A. Yes, sir.

Q. When were the other five units put into operation?

A. The seventh unit was placed in operation July 1st, 1928.

Q. They were just being constructed during that period?

A. Yes, sir. The plant was in full operation the last six months of the year, and in partial operation the first six months of the year.

Q. In addition to this rent, all the taxes and expenses are paid by the Philadelphia Electric Company, are they not?

A. They are either paid by them or reimbursed to The Susquehanna Power Company.

Q. That is the same thing, is it not?

A. Yes, sir.

Q. And, in addition to that, there is a provision in the lease about depreciation, is there not?

A. Yes, sir.

Q. You are reimbursed for all expenses, taxes and depreciation, and receive a minimum rental of $4,030,000.00; that is, according to the copy of the agreement that you have filed with the State Tax Commission?

A. I don't know about that amount.

Q. That is the amount shown in this booklet?

A. Yes, sir.

Q. And what was filed by The Susquehanna Power Company as a copy of their lease?

A. I don't know about that; I don't know what was filed.

Q. And you don't know the provisions of this lease?

A. In a general way I do.

[fol. 56] Q. You didn't mean to file one here that was not correct, did you?

A. I didn't file that one.

Q. You are the bookkeeper?

A. Yes, sir.

Q. You keep the accounts?

A. Yes, sir.

Q. Was that $4,030,000.00 rent not to The Susquehanna Power Company; was that in addition to taxes and depreciation?

A. Whatever the sum might be as rent, it would be net; we are reimbursed for our expenses, including taxes and depreciation.

Q. So they would get as a return, The Susquehanna Power Company, as lessor of this property seven per cent on a little over fifty-seven million dollars?

A. I would not say that.

Q. You are the accountant and ought to know?

A. Perhaps the minimum figure is $4,030,000.00; and that would be seven per cent on about fifty-seven million dollars. However, I don't know that that figure is correct.

Q. You don't seem to know anything about any figures except those you are reading off that report, and I don't see how you keep the books if you don't know what the income is; if this is not correct, what is correct; what is the revenue received annually by The Susquehanna Power Company?

(Mr. Howard:) The lease fixes what they get.

(Mr. Robinson:) And he says that he has gotten it, but he don't know whether this is correct or not.

(Mr. Howard:) The final copy of the lease is the correct one.

(Mr. Robinson:) Isn't this the correct one? You filed it.

(Mr. Howard:) I thought it was the correct one, but whether or not any changes have been made in that copy, I

can't say. However, Mr. Mason will telephone over to my office and get the latest copies of the lease and mortgage.

[fol. 57] (Mr. Williams:) That one is substantially correct. I think that the only change made, material one, was a change from a minimum fixed sum as rental to a return of seven per cent on the investment.

(Mr. Howard:) It was the correct one, and if any changes had been made in it I did not know of them.

(Mr. Robinson:) This copy of the lease is approximately correct, is it?

(Mr. Howard:) I think so.

(Mr. Price:) Is there any dispute that they get a return of seven per cent on their investment?

(Mr. Robinson:) No, sir; but the lease filed here sets the minimum return as $4,030,000.00.

(Mr. Price:) And that is seven per cent on a little over fifty-seven million?

(The Witness:) A return of seven per cent on the fixed capital as of January 1st, 1929, would be approximately $3,220,000.00.

Q. Do you know whether or not seven per cent or any other per cent is mentioned in this lease I have here?

A. There is no percentage mentioned in the paper that you have before you. That is not a copy of the lease as it was finally revised. That copy of the lease provides for a return at the rate of seven per cent.

(Mr. Robinson:) Where is that lease?

(Mr. Mason:) I hope it is in the papers for which Mr. Howard has sent to his office.

(Mr. Robinson:) That is all from this witness.

Redirect examination.

By Mr. Howard:

Q. You used the expression, in testifying about these figures on that report, "total investment" in those accounts—can you explain just what you mean by that?

[fol. 58] A. They are the total charges that have been entered upon the books of the company as of the date of that report.

Q. Is that confined to cost, or does it include other items—take for instance the turbines—does that just in-

clude the cost of them f. o. b. the plant, or does it also include the cost of adapting them to the plant?

A. I do know that it includes not only the price that was paid the manufacturers for them, but also the cost of erection and handling them incident to putting them into the plant.

(Mr. Howard:) That is all from this witness.

(Testimony of witness concluded.)

Mr. Howard:) I now offer to file with the Commission the lease, the mortgage—the whole series of papers.

Thereupon, ALEXANDER WILSON, III, a witness of lawful age, being produced on behalf of the Power Company, first being duly sworn, testified as follows:

Direct examination.

By Mr. Howard:

Q. Tell the Commission your place of residence and your occupation?

A. I reside at Lansdowne, Pennsylvania, I am an engineer, and am assistant chief engineer of the Philadelphia Electric Company.

Q. Tell the Commission briefly what has been your training and experience as an engineer?

A. I studied at Cornell where I received the degree of Mechanical Engineer. Since then I have been employed for eighteen years or more by the Philadelphia Electric Company and associated companies.

Q. What character of work have you been doing?

A. I started out with practical work—erecting switchboards and sub-station equipment, and continued on through inspection of building construction. I was assistant to the vice-president in charge of engineering operations; [fol. 59] and, under his supervision, had direct charge of the construction of the principal generating plants of the system, and in the east.

Q. You mean the generating plants near Philadelphia and elsewhere?

A. Yes, sir—Conowingo.

Q. What was your connection with the work at Conowingo?

A. I was executive assistant to the vice-president, and have been in charge of the business end of that work.

Q. Then you are familiar with the Conowingo project and the various details of it?

A. Yes, sir.

(Mr. Robinson:) Were you on the ground during the construction work?

(The Witness:) I spent possibly four days a week there during the heaviest part of the construction—since then it has been getting less.

Q. I am asking you to look at Schedule No. 2, which forms part of the report made by The Susquehanna Power Company to this Commission, in connection with the assessment of 1929 on capital stock—this Schedule No. 2 professes to be an analysis of the fixed capital stock of the company—are you familiar with the items enumerated in that schedule?

A. I have a general knowledge of the classification of accounts; and this is in accordance with the classification as far as I can recall the details now.

Q. And that classification is the one required by the Public Service Commission?

A. So I understand.

Q. Mr. Sealy just testified that, among those items there, are items showing the investment in turbines, machinery, etc.; and I think he picked out six of these aggregating $7,798,118.84, as being the items showing such investment. Can you tell the Commission what these items do show—what they show as to the cost of these items, and in what way they were ascertained and made out—do you know about all of that?

A. I know it to this extent—that all purchases and charges for labor and material must be made in accordance [fol. 60] with the classification of the accounts.

(Mr. Robinson:) Do you know if this was done in this particular instance?

(The Witness:) To the best of my knowledge, it was.

(Mr. Robinson:) Did you have anything to do with it?

(The Witness:) Yes, sir—to this extent: The men worked under my supervision and I was responsible to see that the clerks made the entries correctly.

Q. You knew of the purchases of machinery?

A. Yes, sir.

Q. Did you purchase it?

A. No, sir. It was purchased through the construction agent—on quotations submitted to them for approval; and I received copies of the purchase orders and checked them.

(Mr. Robinson:) You had nothing to do with making up these accounts, did you?

(The Witness:) No, sir.

(Mr. Robinson:) And you have nothing to go by here except looking at some one else's accounts?

(The Witness:) That is all.

(Mr. Robinson:) We object as this gentleman didn't keep the accounts, and had nothing to do with this report—he didn't help to do anything with it.

(Mr. Howard:) In the accounting of these large corporations there is no one man who makes all the entries, and this witness is entitled to testify from a summary that he knows to be correct.

(Mr. Robinson:) We will withdraw our objection.

Q. Mr. Wilson, can you tell the Commission what was the actual cost to the company of the various items of [fol. 61] machinery—what was the actual cost of The Susquehanna Power Company of the generators and other items of machinery shown on this list that was return- to this Commission?

A. I can say that I have examined in detail the reports of the construction agents—Stone and Webster, and Dan Zimmerman. I have spot checked certain of these items shown in these reports against the purchase orders, which these agents issued for the purchase of certain machinery——

(By Mr. Robinson:)

Q. You have done that in reference to these items?

A. Yes, sir.

Q. Is it any part of your business to know the expenses incident to the purchase of machinery there—as assistant chief engineer?

A. If you want me to amplify my duties, I will do so. I have defined what I have to do.

Q. As assistant chief engineer, is it any part of your business to know the expenses incident to the purchase of machinery there?

A. Yes, sir.

Q. As assistant chief engineer, you had charge of the purchase of this machinery?

A. As an employe of the company, I would say yes to your question.

Q. What memorandum did you keep of that?

A. Of what?

Q. Of the cost of the machinery.

A. I have copies of the purchase orders.

Q. You may have gotten them; when, lately?

A. As the purchases were made and before the purchases were made I received the bid sheets——

Q. Where are they?

A. In Philadelphia.

(Mr. Price:) It seems to me that we are making mighty slow progress in this matter.

(Mr. Robinson:) This witness ought to show that he knows something about it before he is allowed to testify.

(Mr. Howard:) If we were to take up these items the [fol. 62] way you would prove a mill account or the way groceries were bought, we will be a long time on it.

(Mr. MacNabb:) All we want is a frank statement of what it cost to buy this machinery and put it in position to be of use, not what a fraction of it cost.

(Mr. Howard:) The figures he gives will show the cost.

(By Mr. Howard:)

Q. Can you tell the Commission what was the cost of these different items, taking them as they are listed in that schedule?

(Mr. Robinson:) That don't establish anything. If you are going to take this statement, why put this witness on?

(Mr. Howard:) We want to show what the actual cost was, what those sums were expended for.

(Mr. Price:) Can't you get that from the schedule?

(Mr. Howard:) This is what they cost placed in position. I want to know what is cost to buy them.

(Mr. Robinson:) You don't contend that it is just the cost of them? If you buy a wheel for $25,000 and it costs $35,000 to get it in position to be used, do you contend that it is only worth $25,000 installed?

(Mr. Howard:) You are putting it in extreme form, but I will say yes.

Q. Can you tell the Commission what was the cost of these different items, taking them as they are listed in that schedule, the articles as they were delivered at the plant of the company?

(Mr. Price:) Do you want to change the report that is already in?

(Mr. Howard:) We have a right to change it if there is any mistake in it. The investment figures that you have there relate to the total investment.

[fol. 63] (Mr. Price:) Do you want to go over these items and show how much they cost and how much labor was applied to them? I don't see where that will help us much.

(Mr. Howard:) Take the turbines there; we have in this schedule the total amount invested in them. We want to show what those turbines cost delivered at the plant. We are only going over six or seven of the items, and we don't want to go over a thousand and one items that go to make up this investment.

Q. Did you approve the payments that were made in this case?

A. Each voucher; no, sir.

Q. But the most of them?

A. I approved final payments and the large items.

(Mr. Howard:) If, in cases of this kind, we are required to get the man who knows about each item and check them up in the books of the company, we never could prove anything.

(Mr. Robinson:) What do you want to show by your books?

(Mr. Howard:) We want to show our total investment in accounts that are kept under the regulations of the Public Service Commission. That investment consists of two

kinds of items: the actual cost of the machinery and various other items, including the machinery being fixed so it could be put into operation. We want to segregate those items.

(Mr. Price:) Won't that be a contradiction of the report you have filed?

(Mr. Howard:) What we have filed shows our total investment in these accounts.

(Mr. Weant:) Isn't that the actual cost under the rules of the Public Service Commission, the actual cost of the machinery plus the cost of putting it in or adapting it to its use?

(Mr. Robinson:) If you want to do that, this witness is incompetent; he didn't keep the books and accounts.

[fol. 64] (Mr. Williams:) But he can prove items of cost.

(Mr. Price:) If you are going to fix the value of this machinery at its cost f. o. b. the plant without the cost of erecting it or putting it into position to be used, I will say that we are going to overrule that, and it will save you all that trouble.

(Mr. Howard:) All of these figures here show the total expense. If you build a house and adapt a room for a piece of machinery, you wouldn't say that that expense was a part of the cost of the machinery, rather the value would be in the house as a whole. The cost of the machinery would only be what it cost at the manufacturer's, not what it cost to get it into the house.

(Mr. Weant:) Take an automobile; if you bought the parts and assembled them, would you say that the automobile was only worth what the parts cost?

(Mr. Howard:) If I bought an automobile and had to adapt my garage to receive it, that additional cost would not be added to the value of the automobile. So I contend that the value of this machinery does not include the expense of adapting a place to receive it, putting it in place has not value as personal property.

(Mr. Archer:) There is a distinction between machinery in the cases of Maryland corporations and that of individuals. If this particular class of machinery was put in a building and operated by an individual, the part that was fastened there would be taxed as a part of the real estate, but there is a special act in Maryland that makes the ma-

chinery of corporations, whether fixed or not, taxable as part of the stock.

(Mr. Howard:) As a legal principle, I think that is right, but here there is a difference in the value of the machinery; that is our principal point.

(Mr. Archer:) When we were fixing the value of the real estate, you asked to subtract from the cost of the dam the sum of $8,341,141.43 as being the value of the machinery and could not be taxed as part of the real estate. Now, [fol. 65] when we went to tax the personal property you want to say that a portion of this sum should be taxed elsewhere or not at all.

(Mr. Howard:) We have made no such a request, and it will be proper to argue that point when we argue the principal points of this case.

(Mr. Weant:) What is the purpose of your objection here?

(Mr. Howard:) In assessing this stock, you are confined to the value of the tangible personal property, and we think these other items should not be counted or taken into consideration when you are valuing that property.

(Mr. Weant:) You may go on.

(Mr. Robinson:) We want to reserve an exception to every question.

(Mr. Howard:) I don't think you note exceptions here as you do in cases in Court.

(The Witness:) I am unable to do that without doing a lot of adding of figures, but I have gone over and segregated in each of these items in these subdivisions giving a total investment of about $8,000,000.00, as investment applied to these accounts called equipment accounts, and that includes all of the equipment. I can say that I have examined these accounts and taken out of them the purchase price f. o. b. Conowingo of that which is detachable—secured but capable of being removed from its place without being destroyed or impaired. The sum total of that f. o. b. Conowingo is substantially $5,225,000.00.

Q. That is the cost without any depreciation?

A. That is the purchase price f. o. b. Conowingo.

(Mr. Robinson:) We object to all of this.

(Mr. Weant): Are you reading from a record you made yourself?

[fol. 66] (The Witness:) I examined the records and made this.

(Mr. Robinson:) Did you make that record from the books?

(The Witness:) No, sir—I didn't make it from the books themselves, but from original sources.

(Mr. Robinson:) We make a motion to strike that out.

(Mr. Price:) From what did you make that statement?

(The Witness:) I made it from original sources. By "original sources" I mean a compilation of the cost data secured from Stone and Webster, and Dan Zimmerman, which were the original sources from which the entries in our books were made.

(Mr. Weant:) Give us one of the articles that went into that item you have just given us?

(The Witness:) Transformers——

(Mr. Weant:) They were bought f. o. b. Conowingo?

(The Witness:) Yes, sir.

(Mr. Weant:) What did they cost at the factory?

(The Witness:) I don't know what the freight was, as they were purchased f. o. b. Conowingo. They cost $506,466.00.

(Mr. Weant:) Where did they come from?

(The Witness:) I don't remember now whether it was Pittsfield or Schenectady.

(By Mr. Howard:)

Q. They were sold f. o. b. your power plant?

A. Yes, sir.

(Mr. Robinson:) Where did you get that data?

(The Witness:) I got it from this report.

[fol. 67] (Mr. Robinson:) What is that report?

(The Witness:) It is the cost data of the Conowingo Hydro-Electric Project.

(Mr. Robinson:) Did you get up that book?

(The Witness:) I didn't get up that book.

(Mr. Robinson:) Have you your books with you?

(The Witness:) No, sir.

(Mr. Williams:) He says that he was there four days a week and approved all of these purchases. The law compels you to take this machinery and value it; and, in doing that, you must take into consideration its purchase

price, and the purpose for which it is required. The law says that you must consider what the machinery is worth for the purposes for which it is used; and, in determining that, you must see what is the cost price. How can you do that without considering the cost price, how long it has been there, its depreciation, whether it was specially made for that purpose, whether it can be removed from there, whether it will then have any value—all those are the elements that this Commission must consider if they are to meet the requirements of the law, and take that machinery and put a value on it.

(Mr. Robinson:) Have you any authorities to support that view?

(Mr. Williams:) I don't think I require any authorities for that.

(Mr. Weant:) This is only a question of ability and qualification, is it not?

(Mr. Williams:) Yes, sir.

(Mr. Weant:) Do you really think that this witness is qualified?

(Mr. Williams:) Yes, sir. In some instances he has personal knowledge. He was on the ground when this work [fol. 68] was being done looking over the work of the agent; and he approved various items that were purchased.

(Mr. Howard:) I think that this testimony is admissible. It is a matter that an expert accountant could prove, and we will also offer the books, if they are wanted.

(Mr. MacNabb:) It seems to me that the Power Company is only trying to befog the issue.

(Mr. Howard:) Not at all.

(Mr. Weant:) What do you mean by "spot checking"?

(The Witness:) I mean this by "spot checking"—I have been over these accounts and have examined this report, and I have taken out all items of detachable or removable equipment, have referred to the purchase orders, and have verified the amounts shown and the purchase prices in this book I have checked with the prices shown on the purchase orders. I did not check every item, but I did that in a number of cases, and that is what I call "spot checking".

(Mr. MacNabb:) You checked them in part?

(The Witness:) Yes, sir.

(Mr. Howard): You took a number of the items, check them and found them to be correct?

(The Witness:) Yes, sir.

(Mr. Howard:) Then you presumed that the rest of them were correct?

(The Witness:) Yes, sir.

(Mr. Weant:) Do you want to offer that paper in evidence?

(Mr. Howard:) No, sir—I want to ask the witness some questions about it.

(By Mr. Howard:)

Q. Repeat to the Commission how much of the total ex- [fol. 69] penditure for machinery represents the actual cost of the machinery f. o. b. the plant?

A. It is about $5,225,000.00.

Q. I notice that you said just now that that represented machinery that could be removed under certain circumstances. Make that clearer to the Commission—just what machinery do you mean by that?

A. When I used the word "machinery," I used it in the sense that it excluded from those accounts, called Equipment Accounts, specially provided foundations or specially provided structures not detachable, but in the building—those were included in those accounts. As an illustration, in that classification there are concrete compartments which house separate from each other the high tension switches of 13,000 volts, and also charged in the same account are the oil switches. I excluded from this $5,225,000.00 any special structure, although they were included in that total of the account. I did include the oil switches in that amount.

Q. You say that switches are installed in these concrete compartments?

A. They are a part of the structure——

Q. Part of the dam or the power house?

A. Part of the power house.

Q. They are an actual and concrete part of the power house itself?

A. Yes, sir; it is a part of the building as the building is defined.

Q. Mr. Wilson, take some other instances; take the turbines, you didn't exclude them because they were built in such a way as it would hurt the structure to take them out, did you?

A. There were certain elementary purchases that were made under contract, take the high scroll casing and the special foundation provided where the water wheel runs. I got the manufacturer's value on that, the contract price on that.

(By Mr. Robinson:)

Q. Where is it?

A. I consulted with the manufacturer.

Q. Who was that?

A. Wise and Company.

[fol. 70] Q. You have a written statement from them?

A. No, sir.

Q. You are testifying from some talk you had with the manufacturer?

A. Yes, sir. Do you want me to give my judgment?

Q. I am not asking you to give anything?

A. I formed my judgment after consulting with the manufacturer, and I have had enough experience to know in my own mind whether or not the statement of the manufacturer was correct.

(By Mr. Howard:)

Q. Mr. Wilson, you say that you excluded from this calculation such items as went to make up the cost of foundations in the dam or built to receive this machinery. Will you tell the Commission what other kind of items, if any, you excluded, and explain them?

A. The cost incident to the erection of the equipment, cost of preliminary operation before being placed in service, and——

(Mr. Weant:) Where did you get them?

(The Witness:) I took the purchase price of the equipment and that excluded everything else, including those items we have just talked about.

(By Mr. Robinson:)

Q. Are the items of expense to make the structure ready to receive this machinery kept separate — any other costs on the books of the company?

A. Yes, sir. When you say books of the company, you refer to the accounts as kept by Mr. Sealy. I know that

I have records segregating the costs of these compartments.

Q. Where are they?

A. I have one of the records right here that segregate those items, and I have Stone and Webster's reports; they were the agents on the work and our books are made up from their reports. They did the work, took our money, spent it and told us how they spent it.

Q. Take one of those water wheels: you can say under [fol. 71] oath just what it cost to make the structure to place it in, you can tell us what that expense was?

A. Yes, sir.

Q. Stone and Webster were the contractors on this job?

A. They were our agents.

Q. They didn't build part of that dam, did they?

A. Not by contract——

Q. There was a part of the dam they didn't build, wasn't there?

A. Stone and Webster, Inc., built the power house and a short section of the dam.

Q. Who built the rest of it?

A. The construction agent employed was the Arundel Corporation.

(By Mr. Howard:)

Q. Explain fully to the Commission what items were excluded in arriving at this cost; one of the principal ones was the preparation of the foundations to receive this machinery?

A. I did say that I excluded all the costs incident to the erection of the equipment, expenses of preliminary operation, testing, overhead expenses.

Q. So that this amount of $5,225,000.00 gives us the cost of this machinery as delivered there apart from the various installation costs mentioned?

A. Yes, sir.

Q. Is that machinery standard machinery, or special machinery specially designed for the uses of the company?

A. The water wheels on the main generators are specially designed to meet conditions and head stream flow. The rest of the machinery is more or less standard, although not stock machinery. It was built to order, but is standard of any electrical line.

Q. Is it possible to realize anything on that machinery over and above its f. o. b. cost at the plant—do you understand my question?

A. No, sir.

Q. My question is this: if you had to sell that machinery, would it have any value in excess of its f. o. b. cost at the plant?

A. I should not think so.

Q. Without heeding anything that I may have said, could [fol. 72] you get more or less for this machinery if you had to sell it?

A. I should say less.

Q. Do you know of any second-hand dealer who would have purchased said machinery on January 1st, 1929?

(Mr. Robinson:) We object——

(The Commission:) Objection sustained.

(Mr. Howard:) We note an exception.

Q. I understood you to say that the generators, water wheels and certain other machinery were specially designed for use at Conowingo for the purposes of developing the power of the Susquehanna River?

A. The water wheels on the generators are the only ones specially designed for that site.

Q. You are generally familiar with power development in the United States, are you not?

A. I have had some experience in it. In a general way I am familiar with it.

Q. Do you know of any other power development in this country that could have used those generators and water wheels on January 1st, 1929?

(Mr. Robinson:) We object——

(The Commission:) Objection sustained.

(Mr. Mason:) The point that we are trying to bring out is perfectly proper. It is appropriate the Commission should have before it all the facts concerning the value of this machinery. In endeavoring to arrive at your conclusion in this case you must reach or base your opinion upon something other than the arbitrary amount in the investment account in this particular project. I realize the difficulty in this matter, but you should have before you every possible element of value.

(Mr. Price:) You don't think the Commission is going to value this machinery as junk, do you? We are going to consider it as it is.

(Mr. Howard:) That is all.

[fol. 73] Cross-examination.

(By Mr. Robinson:)

Q. All of these specially made chambers or bases which you have referred to as deducting from the machinery when the question of the assessment of the real estate was up, you claimed that that was a part of the power house, did you not?

A. I am not familiar with that at all.

Q. But they are included in here in the amount given today in the investment account?

A. Yes, sir.

Q. You don't know anything about the fact that when the question of the assessment of the real estate was up it was claimed that machinery to the extent of $8,131,000 should be deducted?

A. I know nothing about the assessment of the real estate.

Q. But you do know what you got out of this book that some one gave you?

A. Yes, sir; and my personal knowledge.

(Mr. Howard:) We want to offer in evidence now a copy of the final lease and the first mortgage of the company. I think that we offered these papers in the other case.

(Mr. Mason:) The copy offered here now is identical with the one filed with and approved by the Public Service Commission of Maryland, and it varies in some particulars with the approved copy that Mr. Robinson had here and from which he examined the other witness. He will see that, in this copy the basis for the rent is not any fixed minimum, but seven per cent on the actual liquidated investment in the project, plus taxes, expenses and depreciation.

(Mr. Price:) That copy does not say what the rent is to be?

(Mr. Mason:) No, sir; not any fixed minimum sum.

(Mr. Howard:) We also wish to offer the Federal franchise in evidence, a copy of this was filed at the time the question of the real estate assessment was up.

[fol. 74] (Mr. Archer:) Does that agreement show that the renting company—the Philadelphia Electric Company or The Susquehanna Power Company pays the taxes?

(Mr. Mason:) The taxes are mentioned in the agreement.

(Mr. Howard:) That is all in the lease.

(Mr. Robinson:) That lease does not agree with the one I have.

(Mr. Mason:) That lease was correct as originally filed, but subsequently it was changed.

(Mr. Archer:) What are fixed charges?

(Mr. Mason): Bond interest and other fixed charges that must come out of the corporate funds before there is any sum available for the stockholders.

(Mr. Howard:) There is no question but that the bond interest is paid out of the rent.

(Mr. Mason:) As I understand it, an impression has been made here that $300,000.00 has been added to the personal property, over above that item filed with this Commission, as a result of Mr. Sealy's testimony. We would like to recall Mr. Sealy.

Thereupon JESSE V. SEALY, a witness of lawful age, who had been previously sworn in this case, was recalled on behalf of The Susquehanna Power Company.

Direct examination.

(By Mr. Mason:)

Q. Mr. Sealy, in an exhibit that was filed before this Commission and is part of the Record in the hearing of the appeal from the assessments by the County Commissioners of Harford and Cecil Counties, there is an item of $8,131,341.43 as being the investment in machinery; and, on page four of that exhibit there is a detailed statement of that item, in which there appears items of administration [fol. 75] expenses and construction fees. Now, in order that there may be no misunderstanding, I will ask you to explain the reason for the difference between that total and

the total that you gave here today for the items of so-called personal property—$7,798,000.00 plus. I will ask you what explanation you have for that difference and whether or not these administration expenses and construction fees, or any proportion of them, are allocated to that item as it appears in this exhibit, or to any other items on the report filed with this Commission?

(Mr. Robinson:) That is a long question.

(Mr. Howard:) We are only asking him to explain that difference of $300,000.00.

A. I will attempt to answer the question as I understand it. The figures shown in the exhibit filed with the State Tax Commission are based on our investment in fixed capital as of September 30th, 1928—that shows equipment items of $8,131,341.43 and that figure includes approximately $600,000.00 for construction fees and administration expenses—fees paid to Stone and Webster and Dan Zimmerman—paid to them under their contracts.

Q. Their fees were $600,000.00, and a portion of those fees were included in this item of $8,131,341.43?

A. The amount of $8,131,341.43 includes the construction fees and administration expenses—the proportion chargeable to these accounts. Now the figures for equipment items as of December 31st, 1928—$7,800,000.00 in round figures—does not include anything for construction fees or administration expenses. These items are not included in the statement to the State Tax Commission in the part marked Schedule Two; but they are included in the items of engineering, superintendence during construction, general office expenses, clerical salaries, etc., and certain other overhead items. The figures of $8,131,341.43, as of September 30th, 1928, included approximately $600,000.00 of construction fees and administration expenses, leaving an approximate investment of $7,500,000.00 in the equipment items; and, by December 31st, 1928, these [fol. 76] same accounts had increased to approximately $7,800,000.00.

(Mr. MacNabb:) That does not contain any construction fees or administration expenses?

(The Witness:) That is right.

(Mr. Price:) There is a difference between the September and December items?

(The Witness:) A different type of exhibit was prepared in December.

(Mr. Price:) And the same item don't mean the same thing in December—you took $600,000.00 out of it in December?

(The Witness:) I didn't take it out—it is here in September and December, too. I added something to it in December. This one was filed on September 30th, 1928, and later the different expenses were added to it.

(Mr. MacNabb:) What was your investment in these accounts as of September 30th, 1928?

(The Witness:) It was $7,531,341.00.

(Mr. MacNabb:) Those are not the figures here?

(The Witness:) The figures given on September 30th, 1928, include approximately $600,000.00 in construction fees and administration expenses.

(Mr. MacNabb:) Show us what you mean by that?

(The Witness:) Our investment in the equipment accounts on September 30th, 1928, was $7,531,341.00. Now, between September and December that increased about $300,000.00; and our investment in equipment accounts as of December 31st, 1928, was $7,798,000.00 in round figures.

(Mr. Robinson:) You spoke of a $600,000.00 item?

[fol. 77] (The Witness:) That is the sum of the items.

(Mr. Robinson:) Where did you get that?

(The Witness:) The $600,000.00 is a proportion of the fees paid to Stone and Webster, and Dan Zimmerman for the construction of the plant—for their work in connection with the supervision of the project—that sum is the proportion of those fees and general office expenses applicable to equipment.

(Mr. Robinson:) Did you give us the time taken to place the machinery in position, or did you just figure on the contract price of the items?

(The Witness:) That was the sum of money that was paid under the general contract to Stone and Webster, and Dan Zimmerman, for which certain things were done. I took into consideration the cost of these items and the cost of the entire job, and that ratio of the construction fees was added here.

(Mr. Robinson:) Would the machinery be of any use without the expenditure of the money to place it in position to operate?

(The Witness:) It would be useless until it was placed in position to operate.

(Mr. Robinson:) How could you operate the plant without the expenditure of this $600,000 that was allocated to this necessary work?

(The Witness:) That is what was paid to Stone and Webster and Ben Zimmerman.

(Mr. Robinson:) But it was necessary to expend this sum of $600,000 in order to get the plant operating?

(The Witness:) Yes, sir.

(Mr. Robinson:) Without that work you couldn't have operated the plant effectively, would you?

[fol. 78] (The Witness:) I don't think I am qualified to testify about the proper operation of machinery.

(Mr. Robinson:) Now, you have made a statement that, as of September 30th, 1928, your investment in turbines, water wheels, generators, etc., was $8,131,341.43. How much had been added to that as of December 31st, 1928?

(The Witness:) I will have to make a calculation and build up some kind of a figure.

(Mr. Robinson:) It was more than that, wasn't it?

(The Witness:) The investment in the equipment account increased between that date and December 31st approximately $300,000.

(Mr. Robinson:) How much did you pay Stone and Webster and Dan Zimmerman during that period?

(The Witness:) I don't know how much was paid those parties during that period.

(Mr. Robinson:) This increase would run it up to about $9,000,000, wouldn't it?

(The Witness:) I don't know.

(Mr. Weant:) As you are the bookkeeper, what did your books show as of December 31st, 1928 was the value of this stock?

(The Witness:) Our books showed a book value.

(Mr. Weant:) Of how much?

(The Witness:) It was $4,866,886.36.

(Mr. Weant:) As you have 245,300 shares that makes the value of a share about $20?

(The Witness:) I didn't calculate it.

(Mr. Weant:) You have it on your books as of some value?

[fol. 79] (The Witness:) We carry it at that value.

(Mr. Howard:) That includes the real estate value?

(The Witness:) Yes, sir.

(Mr. Mason:) The report filed with the Commission as of January 1st, 1929, shows a book value on the stock at the rate of $19.43 per share, and that appears to be the only value given it. Under the circumstances, with the assessment of the real estate, there is no taxable value against the shares for the individual shareholders.

(Mr. Howard:) That is all the testimony we have.

(Testimony of witness concluded.)

(Testimony closed.)

IN CIRCUIT COURT OF HARFORD COUNTY

MOTION TO DISMISS APPEAL—Filed January 10, 1930

To the Honorable the Judges of Said Court:

The State Tax Commission of Maryland, appellee in the above entitled case, moves the Court to dismiss the appeal therein, for the following reasons:

(1) Because as set forth in the petition of The Susquehanna Power Company for the appeal in this case, it is claimed that the Commission arrived at an assessment greatly in excess of the true assessable value of said shares of stock, and that no appeal can be taken to this Court from the action of the State Tax Commission on the value of said capital stock, but that under the provisions of Section 170 of Article 81 of the Code of Public General Laws of Maryland the only appeal from such valuation is to the Comptroller of the Treasury and State Treasurer, and that their decision in the matter is final if affirmed, and that this Court has no jurisdiction to hear the appeal as to the value of said shares.

[fol. 80] (2) Because in determining the value of said shares for the purpose of assessment there is no evidence

in this case that the State Tax Commission adopted the minimum rule referred to in Section 163 of Article 81 of the Code of the General Laws of Maryland.

(3) Because there is no law in Maryland providing for the assessment of personal property or machinery of a corporation upon the theory set forth in the First Prayer of the petition for appeal in this case.

(4) Because there is no evidence in this case that the State Tax Commission attempted to value the franchise rights of The Susquehanna Power Company granted to it under the license from the Federal Power Commission.

And for other reasons to be made known at the hearing of this motion.

Thos. H. Robinson, R. H. Archer, Chas. H. MacNabb,
Attys. for Defendant.

IN CIRCUIT COURT OF HARFORD COUNTY

PETITION FOR REHEARING OF THE SUSQUEHANNA POWER COMPANY—Filed January 14, 1930

To the Honorable the Judges of said Court:

The petition of The Susquehanna Power Company, appellant in the above entitled cause, respectfully shows:

I

That heretofore on the 10th day of the present month the said appeal and the several questions involved therein under the protest of your petitioner, the petition for appeal and the rulings requested of the State Tax Commission were heard by your Honor and held under advisement.

[fol. 81] II

That under said appeal there is involved important Federal questions, and inter alia the power of the State of Maryland to tax the non-resident owner of stock of a Maryland corporation, as will appear by reference to said protest petition and request for rulings.

III

That since the date of said hearing, your petitioner has ascertained that on the 6th day of January, the Supreme Court of the United States handed down an opinion entitled Farmers Loan and Trust Company, as sole surviving executor of the last will and testament of Henry R. Taylor, deceased, against the State of Minnesota, whereby the case of Blackstone vs. Miller, 188 U. S. at 189, was definitely overruled, and that said case was cited and relied upon by the appellees in the case of Corry vs. Baltimore, 196 U. S. at 466, which was an appeal from the Court of Appeals of Maryland, 96 Md. at 310.

IV

Your petitioner shows that the effect of overruling the said case of Blackstone vs. Miller, supra, is to overrule the said case of Corry vs. Baltimore, and thereby to support the contentions of your petitioner in the instant case, and see also the supporting case of Safe Deposit & Trust Company of Baltimore vs. Virginia, 280 U. S. 83 (November 25th, 1929).

V

Your petitioner filed herewith a copy of the United States Daily, dated January 8th, 1930, a newspaper published in Washington City, containing a full and complete text of the opinion in said Taylor case, and prays that the same may be taken as a part of this petition.

VI

Your petitioner therefore prays that it may have a rehearing in the aforesaid cause, so that the legal effect of the said Taylor case, in support of the contentions of the peti- [fol. 82] tioner in the instant case, with reference to the Federal questions involved, may be fully argued and considered.

And for all such other and further relief as your petitioner's case may require.

Chas. McH. Howard, S. A. & F. R. Williams, Attorneys for Petitioner.

The exhibit filed January 14th, 1930, with the aforegoing petition of The Susquehanna Power Company, being a copy of the opinion of the Supreme Court of the United States of January 6th, 1930, in the case of the Farmers Loan and Trust Company, executor of Henry R. Taylor, vs. the State of Minnesota, is omitted from this transcript, and in lieu thereof reference is made to said case and opinion as reported.

In Circuit Court of Harford County

Order Granting Rehearing—Filed January 18, 1930

Upon the aforegoing petition and exhibit it is ordered this 18th day of January, in the year 1930, that a rehearing be granted as prayed in said petition, and upon notice of such rehearing being given the appellant, the questions involved in said appeal were submitted by the counsel for the appellant on the arguments heretofore made, together with that contained in the exhibit filed with said petition, with leave to the appellee to make such reply thereto as it may deem proper.

Walter W. Preston.

[fol. 83] In Circuit Court of Harford County

Judgment—Filed January 20, 1930

The appeal of The Susquehanna Power Company from the assessment on the capital stock of The Susquehanna Power Company, a Maryland corporation, having been argued by the counsel for the appellant and the appellee, and submitted, and the papers in said case having been duly read and considered.

It is thereupon this 20th day of January, 1930, by the Circuit Court for Harford County adjudged and ordered that the order of the State Tax Commission fixing the value for the purposes of assessment of the capital stock of said corporation be and the same is hereby affirmed.

And it is further ordered that the motion of the State Tax Commission to dismiss the said appeal be and the same is hereby overruled.

Walter W. Preston.

In Circuit Court of Harford County

Bill of Exceptions and Order Settling Same—Filed January 25, 1930.

This appeal came on to be heard before said Court on the 10th day of January, 1930, and the Court had before it the transcript of the Record including the reports of The Susquehanna Power Company to the State Tax Commission of Maryland, January 1st, 1927, and 1929, and the assessment of said Commission and the questions involved in the protest to said Commission of said Power Company, its petition for appeal, requests for rulings and order of said Commission. After oral argument by counsel for the respective parties, and pending said Court's decision on said appeal, the said Power Company filed, on January 18th, 1930, its petition for a rehearing, with its exhibit to said petition, and thereafter on said 18th day of January, 1930, said [fol. 84] Court, by its order, granted a rehearing on said petition and exhibit, and the questions involved in said appeal were submitted on the arguments theretofore made, and on said opinion and exhibit with leave to appellee to reply thereto.

And thereafter on the 20th day of January, 1930, on submission by appellant and appellee, and on consideration of the papers in said appeal, the said Court by its order affirmed the order of said Commission, fixing the value for purposes of assessment of the capital stock of said Power Company, whereupon said Power Company excepted to the said ruling and order of said Court and prayed said Court to sign and seal this, its Bill of Exceptions which is accordingly done this 25th day of January, 1930.

Walter W. Preston. (Seal.)

IN CIRCUIT COURT OF HARFORD COUNTY

NOTE OF APPEAL TO THE COURT OF APPEALS OF MARYLAND AND AFFIDAVIT—Filed January 24, 1930

Mr. D. G. Wilson, Clerk of said Court:

Enter an appeal to the Court of Maryland from the order of said Court, dated the 20th day of January, 1930, affirming the order of the State Tax Commission, fixing the value for the purposes of assessment of the capital stock of said Power Company.

Chas. McH. Howard, S. A. & F. R. Williams, Attorneys for the Susquehanna Power Company, Appellant.

STATE OF MARYLAND,
Harford County, set:

I Hereby Certify, That on this 24th day of January, 1930, before me, the subscriber, a Notary Public of the State of [fol. 85] Maryland, in and for Harford County, duly commissioned and qualified and residing at Bel Air, personally appeared the above named Stevenson A. Williams, Director of The Susquehanna Power Company, and made oath in the presence of Almighty God that the appeal from said order to the Court of Appeals of Maryland is not taken for delay.

As Witness my hand and Notarial Seal.

Lucille Gray, Notary Public. (Notarial Seal.).

[fol. 86] IN COURT OF APPEALS OF MARYLAND, APRIL TERM, 1930

General Docket No. 39

THE SUSQUEHANNA POWER COMPANY

vs.

THE STATE TAX COMMISSION OF MARYLAND

Appeal from the Circuit Court for Harford County

NOTICE OF APPEAL—Filed Aug. 1, 1930

To the State Tax Commission and Thomas H. Robinson, Attorney General of Maryland, Robert H. Archer, Assistant Attorney General of Maryland, and Charles H. MacNabb, Attorneys for the said Appellee, The State Tax Commission of Maryland:

This is to notify you that the Appellant will require the Clerk of the Court of Appeals of Maryland to duly certify

to the Clerk of the Supreme Court of the United States the entire printed record in said suit, and all proceedings in said suit subsequent to the filing of said record in said Court of Appeals, and also the original citation, giving notice to the Appellee of the allowance of said appeal.

Wm. Clarke Mason, S. A. & F. R. Williams, Attorneys for the Appellant.

Service of the above notice and præcipe admitted this 1st. day of August, 1930.

Thomas H. Robinson, Robert H. Archer.

[fol. 87] IN COURT OF APPEALS OF MARYLAND

[Title omitted]

PETITION FOR APPEAL—Filed July 10, 1930

To the Honorable, Carroll T. Bond, Chief Judge of the Court of Appeals of the State of Maryland:

The Petition of The Susquehanna Power Company, Appellant, in this Court, and Petitioner and Appellant in the Circuit Court for Harford County, from a decision and Order of the State Tax Commission of Maryland, in the matter of the assessment for taxation of the capital stock of the said The Susquehanna Power Company, respectfully shows:

I

That as fully appears from the record in this cause, this cause is and was in the Circuit Court for Harford County, in which County the principal office of your Petitioner is located, and in the Court of Appeals of Maryland, a suit wherein was drawn in question, the validity of certain Statutes of the State of Maryland, namely, Statutes relating to the State Tax Commission of Maryland, and certain Orders of the said State Tax Commission purporting to have been made in pursuance of said Statutes, on the ground that said Statutes, including said decision and Orders, were and are repugnant to the Constitution of the United States,

and the final judgment of the Court of Appeals of Maryland made and entered in said cause on the 12th day of June, 1930, was and is a decision in favor of the validity of said Statutes, including said Orders made pursuant to [fol. 88] the authority thereof.

II

Your Petitioner for the reasons specified in the Assignment of Errors, which is filed herewith, conceives itself aggrieved by said final judgment made and entered by the Court of Appeals on June 12th, 1930.

Wherefore your Petitioner prays that an appeal may be allowed herein from the Court of Appeals of Maryland to the Supreme Court of the United States, and that an Order may be passed fixing the amount of the bond on said appeal.

Wm. Clarke Mason, S. A. & F. R. Williams, Attorneys for Appellant.

[fols. 89 & 89½] In Court of Appeals of Maryland

[Title omitted]

Order Allowing Appeal—July 10, 1930

And now to wit on July 10 1930, it is ordered that an appeal from the Court of Appeals of Maryland to the Supreme Court of the United States be allowed as prayed, upon the filing of a bond in the sum of One hundred and three thousand dollars ($103,000.00), with good and sufficient security, and that the United States Fidelity and Guarantee Company, a Maryland Corporation, is accepted as surety on said bond and said bond is now approved.

Carroll T. Bond, Chief Judge of the Court of Appeals of the State of Maryland.

[fol. 90] In Court of Appeals of Maryland

[Title omitted]

Assignment of Errors—Filed July 10, 1930

And now comes The Susquehanna Power Company, a body corporate, Appellant in the above entitled cause, in the

Court of Appeals of Maryland, Petitioner and Appellant in the Circuit Court for Harford County, and for its Assignment of Errors shows:

I

That the Court of Appeals of Maryland erred in not reversing the judgment of the Circuit Court for Harford County, dated January 20, 1930, affirming the Order of the State Tax Commission of Maryland, dated December 18, 1929, assessing the capital stock of the said Appellant for taxation, because the owner of said capital stock is a resident of the State of Pennsylvania, where the said stock is taxable, and the assessment thereof in the State of Maryland is double taxation, depriving the Appellant and the owner of said stock, of their property without due process of law, contrary to the Constitution of the United States and the Fourteenth Amendment thereof.

II

That the Court of Appeals of Maryland erred in not holding void the provision of Section 163 of Article 81 of the Public General Laws of Maryland requiring that in no case shall the capital stock of any corporation (such as the appellant,) in the aggregate, be valued for tax purposes at [fols. 91 & 91½] less than the full value of the real estate and chattels, real or personal, held by or belonging to such corporation; and in approving the arbitrary assessment of said stock made pursuant to said statute at more than the fair value thereof and thereby depriving said owner and said Appellant of their and its property without due process of law in contravention of the Constitution of the United States and of the Fourteenth Amendment thereof.

III

That the Court of Appeals of Maryland erred in not holding that no value can be given to the capital stock of the Appellant in excess of the value of the real estate and chattels, real or personal, for assessment, because such excess would include in such assessment the value of the franchise rights of the corporation granted to it under the License of the Federal Power Commission and such value is not subject to assessment for taxation by the State of Maryland

or any political subdivision thereof, because Appellant under said license is a Federal Agent or instrumentality to improve navigation upon a navigable river, which is a highway of Interstate Commerce.

Wherefore the Appellant and Petitioner prays that the said judgment of the Court of Appeals of Maryland made and entered on the 12th day of June, 1930, be reversed, and the said Court may be directed to enter a judgment in favor of the Appellant and Petitioner.

Wm. Clarke Mason, S. A. & F. R. Williams, Attorneys for Appellant.

[fol. 92] Bond on Appeal for $500.00, approved and filed July 10, 1930, omitted in printing.

[fol. 93] Citation, in usual form showing service on Thos. H. Robinson et al., filed July 15, 1930, omitted in printing.

[fol. 94] In Court of Appeals of Maryland

[Title omitted]

Docket Entries

Appeal from the Circuit Court for Harford County.
Filed March 21st, 1930.
June 12th, 1930, Order affirmed with costs.
Opinion filed. Op.—Offutt, J. To be reported.
July 10th, Petition for appeal to United States Supreme Court filed.
July 16th, 1930, Petition of Supersedeas filed, and served on State Tax Commission of Maryland.

Bill of costs omitted in printing.
Clerk's certificate to foregoing paper omitted in printing.

[fol. 95] IN COURT OF APPEALS OF MARYLAND, APRIL TERM, 1930

No. 39

THE SUSQUEHANNA POWER COMPANY

vs.

THE STATE TAX COMMISSION OF MARYLAND

OPINION—Filed June 12, 1930

Judge OFFUTT delivered the Opinion of the Court.

[fol. 96] On October 10th, 1929, the State Tax Commission of Maryland assessed the capital stock of the Susquehanna Power Company, a Maryland Corporation at $6,000,000; and on October 11th notified it that the assessment would become final unless cause to the contrary were shown within fifteen days from that date. On October 23d 1929, the Company filed a protest, which was heard on November 8th. After that hearing on December 18th, 1929, the assessment was made final, and on or about January 2nd, 1930, the Company filed in the Circuit Court for Harford County, a petition in the nature of an appeal from the action of the Commission, and on January 3rd, 1930 addressed a similar petition to the Comptroller of the Treasury and the Treasurer of Maryland. The latter appeal has not apparently been considered, but the appeal to the Circuit Court for Harford County was in due course heard and on January 20th, 1930 by an order of that court the assessment made by the State Tax Commission was affirmed. From that order the Company has appealed to this Court.

The questions raised by the appeal are (1) whether an appeal lay from the action of the State Tax Commission to [fol. 97] the Circuit Court for Harford County, (2) whether the Commission erroneously included in its valuation of the Company's machinery in its power house and dam "the cost of adapting such power house and dam to receive the same", (3) whether a provision contained in Code (1924) Art 81 sec. 163 that in no case shall the stock of a corporation such as the appellant be valued in the aggregate for assessment at less than the full value of the real estate and chattels real or personal is repugnant to Articles 15 and

23 of the Maryland Bill of Rights and to the Fourteenth Amendment to the Constitution of the United States and therefore void, (4) whether any valuation of the capital stock of the Company in excess of the value of its real property and chattels real and personal must necessarily include the value of its "franchise rights" granted under a license from the Federal Power Commission and is void, and (5) whether as its stock is owned by a non resident it is taxable in Maryland.

In view of the decision in B & P Steamboat Co. vs. State Tax Com. 157 Md. 282, and Fidelity Trust Co. vs. Gorman 134 Md. 338, there can be no possible doubt as to the right of the Company to appeal on any question of law from the action of the State Tax Commission to the Circuit Court for [fol. 98] Harford County. The appellee moved to dismiss the appeal in the lower court on the ground that as Code Art 81, sec. 170 allowed an appeal to the Comptroller of the Treasury and the Treasurer that that right was exclusive. But that statute was in force when the cases cited were decided, and it must be assumed that in deciding that an appeal lay also to the Courts on questions of law, under secs. 253, 259, Art. 81 Code Vol. 3, it was considered that the right to appeal to court and the right to appeal to the Comptroller and the Treasurer were cumulative and not exclusive remedies. The reason for that conclusion becomes apparent when the two remedies are compared. The appeal to Court being upon questions of law only was designed to secure to the taxpayer the privilege of having the decisions of the Commission on such matters reviewed by the only agency competent to deal with them. While the appeal to the Comptroller and Treasurer gave to him the privilege of having the judgment of the Commission on questions of fact reviewed by a Board of two laymen, fiscal officials, who by the nature of their offices were qualified to decide such questions.

Broadly stated, the next point presented by the appeal is that the Commission erred (1) in its rulings on the prayers or instructions submitted by appellant, and (2) that [fol. 99] it erred in failing to state the reasons which influenced it in valuing appellant's stock, and that these errors invalidated the assessment which it imposed on such stock.

Taking the second of these questions it cannot be fairly said that the Commission failed to state the reasons which affected its action. For when Mr. Howard, of counsel for the Company suggested at the hearing "we would know better how to proceed if the Commission would give us some idea how they arrived at this tentative value of $6,000,000," the chairman of the Commission replied "We made the assessment in accordance with the law. The three elements mentioned by the law-market value of the stock, net earnings and net assets, were taken into consideration". It is true that after the Chairman had made that statement, the Attorney General stated that the Commissioners "did not have to tell how they did their work". We do not agree with that statement, and in our opinion the law is otherwise. The Commission was an administrative fact finding board, created by statute with such powers and only such powers as the statute gave it. It was neither above nor beyond the law, and when its conclusions were challenged in some appropriate and orderly manner sanctioned by law, it was bound to justify them by showing that they had a legal basis. It had no more right to assess prop- [fol. 100] erty by fiat, and without regard to its actual worth, than it had to bodily appropriate the private property of the citizen to the use of the state. Its tentative assessment had been made without consulting the taxpayer, and without notice to him, and while ordinarily and in the absence of any direct attack its action will be presumed to be correct, Cooley on Taxation sec. 1073, when it is directly attacked, justice requires that the assessors should be required on demand of the taxpayer to state the basis of the assessment. In Consol. Gas Co. vs. Balto. City 105 Md. 52, this court said:— "The appellees have cited in their brief numerous, respectable and eminent authorities from other jurisdictions to sustain the proposition that the method of assessors in arriving at their conclusions is a matter absolutely committed to their discretion, and that the members of such a tribunal cannot be put upon the stand to testify as to the operation of their minds in doing the work entrusted to them, and many of those authorities are collected in 27 Amer. & Eng. Ency. of Law, 2nd ed. page 689.

After careful consideration of these authorities however, and with due respect to the eminent Courts by which they

are announced, we do not think the law can be so declared in this State.

No proceeding more closely analogous to the present can [fol. 101] be found, than that employed in condemning land under the principle of eminent domain and in such cases ever since the case of Tide Water Canal Co. v. Archer, 9 G. & J. 317, the practice in Maryland has allowed the examination of jurors, who signed the inquisition as witnesses, on return of such inquisition for confirmation, 'upon all subjects whatever relating to the controversy, as fully as any other persons who might be sworn as witnesses in the cause, that they may be examined as to the grounds and motives for their finding, in order to ascertain whether in coming to their conclusions they had not mistaken facts as well as the law'." And while that case dealt with the examination of the assessors in the Circuit Court on appeal, its reasoning applies as well to a proceeding before the assessors themselves. For unless the taxpayer is permitted to ascertain from that source what basis there was for the assessment, he would be at the mercy of the uncontrolled discretion of the Commission, since he could obtain it from no other source, as the members of the Commission cannot under the present procedure be examined in court. Fidelity Trust Co. vs. Gorman 134 Md. 340.

But conceding so much, the objection is without point in this case, for as we have stated the Commission did give its reasons for the assessment it made, and those reasons were [fol. 102] rational, sufficient and legal, and we find no support for the statement that the Commission "refused, though repeatedly requested to do so, to give any reasons, or indicate in any way by what process their 'tentative assessment' was arrived at". Had the appellant desired any more detailed or specific statement than that given, it could have applied for it by addressing appropriate questions designed to elicit it, to the Commission. But having failed to do that it cannot now complain that questions which it failed to ask were not answered.

The next objection is that the Commission erred in its rulings on the instructions submitted by the appellant. The first answer to that objection so far as it relates to the first, fourth and fifth instructions, is that they are mere legal abstractions which are not shown to have any

relation to the action of the Commission or the evidence before it. The first instruction stated as a matter of law that "the turbine wheels, dynamos and other machinery installed by said company in its power house and dam on the Susquehanna River, in Harford County, should be valued at their full value as machinery, without including in such valuation the cost and expense of installing the same or of adapting said power house and dam to receive the same." Its fourth announced that so much of Code [fol. 103] Art 81 sec. 163 as declared that "in no case shall the stock of any corporation, in the aggregate, be valued at less than the full value of the real estate and chattels, real or personal, held by or belonging to such corporation", was void as in conflict with Article XV and XXIII of the Declaration of Rights of Maryland Constitution, as well as with the Fourteenth Amendment of the Federal Constitution.

But there is nothing in the record from which it can be inferred that the Commission included in the value of appellant's machinery the expense of installing the same or of adapting the power house and dam to receive it. Moreover assuming that the cost of adapting the power house and dam to receive the machinery, could not be included in the valuation of the machinery, the first instruction further stated that the expense of installing it should not be included in such valuation, and in that it went too far. The value of chattels of that character includes as one of its elements, the expense of fitting it for the owners uses. And if such expenditure give the chattel an added intrinsic value, it should be considered in any valuation of it. And if, in considering that element of value the Commission erred its error was one of judgment which the Circuit court was not authorized to review. M. & C. C. of Baltimore vs. C. & P. Tel. Co., 131 Md. 55.

[fol. 104] The fourth and fifth instructions presented the proposition that the mandate in sec. 163 Article 81 Code that in no case shall the stock of a corporation in the aggregate be valued at less than the full value of the real estate and chattels held by or belonging to such corporation is unconstitutional. But in view of the express declaration of the Chairman of the Commission that in valuing the stock the Commissioner considered the "net" assets of the corpora-

tion, it cannot be assumed that its action was affected by that mandate, nor does it appear that the assessment was in fact higher than the fair value of the stock assessed. If the provision is given the construction asserted by the appellant that it results in double taxation, there would be more force in its argument that it is repugnant to both the State and Federal constitutions and void. But in our opinion the provision cannot reasonably be given any such construction. Mortgaged real estate is taxable to the mortgagor at its actual assessed value without respect to the mortgage lien. Allen vs. Harford County 74 Md. 294, and mortgaged chattels are assessable to the mortgagor in possession without deduction of the amount of the debt, Fields vs. Russell 17 Pac. (Kansas) 476. There is in this State no direct tax on the personal property of the corporation, Code Art. 81 sec. 163, and the value of the real estate upon which there is a direct tax, is deducted from the aggregate value of both its [fol. 105] real and personal property before its stock is finally valued for assessment. So that the final assessment of the shares in so far as it represents tangible property includes no part of the value of the real estate but is based upon the value of the personal property alone, and the situation is not materially different from what it was in 1874 when that provision first found its way into the law. As the law then stood the property of corporations was assessed indirectly through their stock, and the provision meant no more than saying that their holdings of real and personal property, should be assessed to the owners thereof without regard to liens or incumbrances. And while the law has been changed so as to permit the direct taxation of real property held by corporations, the change did not invalidate that provision, because under the amended law the value of the real property was excluded for the valuation of its stock, and that valuation represented only the tangible and intangible personal property of the corporation, without regard to any liens thereon. And since it could have taxed such property directly without reference to such liens there is no valid reason why it may not be taxed indirectly through appellant's capital stock, on an assessment made without reference to liens or debts, for in neither case would the corporation be called upon to pay taxes upon more than [fol. 106] the assessable value of its property. And there

is no possible basis for the contention that the method adopted subjects any of the corporate property to double taxation. For under it the realty is subjected only to direct taxation, and the personal property only to indirect taxation, based in both instances on the fair value of the property taxed.

The third instruction announces that "the valuation of the Company's turbines, dynamos and other machinery constituting an essential part of its power development or unit, constructed and operated under its license from the Federal Government, and therefore exempt from taxation by the State, should be deducted or not included in such assessment or valuation." The controlling principle in that proposition is that appellant's pool, dam and power house are dedicated to a Federal use and therefore exempt from taxation. That contention was considered and rejected in Susquehanna Power Co. vs. State Tax Com. No. 38 of the April Term of this court, and for the reasons stated in the opinion in that case, this instruction was properly refused.

Appellant's sixth instruction stated that any valuation of its stock must necessarily include the "value of the franchise rights" granted under the license of the Federal [fol. 107] Power Commission, and that such value is not taxable. The license itself is of course exempt from state taxation. But that exemption does not extend to property owned and used by the licensee, unless the tax would interfere with its performance of some Federal duty or function. Susquehanna Power Co. vs. State Tax Com. supra. And while it may be assumed that the appellant could not operate its project without the license, nevertheless it may be valued and assessed without including the actual value of the license, just as the property of a manufacturing or mercantile establishment may be taxed and assessed without including in the valuation the value of the license which enables it to operate. For the property of the corporation is separate and distinct from its right to operate or to use its property in a specific way. McCulloch vs. Maryland 4 Wheat. 416, Union Pac. R. R. Co. vs. Peniston 18 Wal., 5, Thomson vs. Union Pac. R. R. Co. 9 Wal.; State vs. Thomas Cruse Sav. Bk. 45 L. R. A. 766. And since the instruction failed to make the alleged exemption contingent upon the fact that any assessment of the

property would interfere with its performance of some federal function or duty validly imposed upon it, it was defective.

The remaining contention is that as all of appellant's stock is held by the Philadelphia Electric Company, a non [fol. 108] resident corporation it cannot be taxed at all in this state. The stock was assessed to the non resident at appellant's principal office in Bel Air, Harford County, Maryland, under the authority of Code Art. 81 sec. 154 and the appellant is required to pay all taxes levied thereon. Ibid secs. 163, 166, 166 A. The objection therefore goes beyond the immediate assessment and reaches the statutes under the authority of which it was made. The effect of those statutes was to fix the situs of stock in a Maryland corporation held by a non resident, in the county or city where such corporation was situated, to impose upon the corporation an obligation to pay any valid tax levied thereon, and to authorize it to charge such payment to the account of the stockholder, and such was the law not only at the time the Company was incorporated, but at the time Corry vs. Baltimore City infra was decided, Acts 1896 Ch. 120 sec. 141. The question therefore falls precisely within the decision of this court in Corry vs. Baltimore City 96 Md. 310 in 1903, and of the Supreme Court in Corry vs. Baltimore 196 U. S. 465 decided in 1905, and Hannis Dist. Co. vs. Baltimore 216 U. S. 285 decided in 1910, in which the validity of those statutes was established. But it is asserted that the Supreme Court in two recent cases, Safe Deposit Co. vs. Virginia 280 U. S. 83, and Farmer's Loan and Trust Co. vs. Minnesota 280 U. S. 204, has rendered the [fol. 109] authority of the Corry case doubtful. But after a careful examination of those cases we are unable to agree with that conclusion. The Court in the Virginia case was called upon to determine whether securities, stocks and bonds, held in Maryland by a trustee domiciled there for the eventual use of persons domiciled in Virginia, and which were properly taxed in Maryland, were also taxable in Virginia, and it was held that they were not because they had acquired a "situs separate from that of the beneficial owners". In the Minnesota case the court was dealing with the right of that state to impose a death tax on negotiable bonds and certificates of indebtedness issued by the State

of Minnesota and the cities of Minneapolis and St. Paul but owned by a person domiciled in the State of New York and held in that state. He died testate, his will was probated in New York, his estate was administered there, and there a testamentary transfer tax was paid on these securities. Minnesota imposed a similar tax on the same securities, and the question presented was whether it had the power to do that. It was held that it had not, apparently upon the theory that the bonds were choses in action, and that their situs was fixed at the domicile of the decedent who held them at the time of his death. Neither of those decisions involved the questions presented here and decided in Corry vs. Baltimore supra, which are (1) that a state may [fol. 110] determine the situs of stock issued by a corporation chartered by it and owned by non residents, where the legislation effecting that result was in existence at the time the charter was granted, and (2) that as an incident of that power it may require the corporation to pay the tax, and (3) may authorize it to charge such payment to the account of the stockholder.

Nor are the reasons which led the court in the Minnesota case to overrule Blackstone vs. Miller 188 U. S. 189 present in this case, but on the contrary if judicial decisions are to be controlled by the changing demands of trade and commerce and considerations of public policy, such considerations inevitably demonstrate the wisdom of the conclusion reached in Corry vs. Baltimore supra. There is no question of double taxation presented here, but the essential question is whether the stock is to escape taxation altogether in the state where the tangible property which it represents is situated.

The only remaining question is whether there is anything in the nature of the assessment itself or apparent on the face of the record which can justify the inference that the assessment was not fairly and justly made. In the absence of any showing to the contrary it will be presumed that [fols. 111 & 112] members of the Commission acted fairly and in good faith, and that the assessment is correct. Cooley on Taxation secs. 1073, 1011. And the record contains nothing which can affect that presumption. It is undisputed that the fixed investment of the Company in Maryland is $45,677,316.90. The aggregate assessment made by the Com-

mission was $28,726,132 and from that the amount of the assessment of the real estate $22,726,132 was deducted leaving a balance of $6,000,000 which was allocated to the stock. There is no contention in this case that the aggregate assessment is excessive, or that the valuation of the real estate as such was unreasonable, and we can find nothing in these findings which were based upon information furnished by the Company, or elsewhere in the record, which affects the validity of the assessment which is the subject of this appeal, and the order appealed from will therefore be affirmed.

Order affirmed with costs.

[fol. 113] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed Aug. 21, 1930

The above named Appellant hereby states its points to be relied upon, and its designation of the parts of the record to be printed, as follows, that is to say:

A

Points upon which it intends to rely:—

Point 1. That said Court of Appeals of Maryland erred in not reversing the judgment of the Circuit Court for Harford County, dated the 20th day of January 1930, which affirmed the Order of the State Tax Commission of Maryland, dated the 18th day of December, 1929, assessing the capital stock of said Appellant for taxation, because the owner of said capital stock is a resident of the State of Pennsylvania, where the said stock is taxable, and the assessment thereof in the State of Maryland is double taxation, depriving Appellant and the owner of said stock of their property without due process of law, contrary to the Constitution of the United States of America, and the Fourteenth Amendment thereof.

Point 2. That said Court of Appeals of Maryland erred in not holding void the provision of Section 163 of Article 81 of the Public General Laws of Maryland (1924) requir-

ing that in no case shall the capital stock of any corporation (such as the Appellant), in the aggregate, be valued for [fol. 114] tax purposes at less than the full value of the real estate and chattels, real or personal, held by or belonging to such corporation, and in approving the arbitrary assessment of said capital stock made pursuant to said Statute, at more than the fair value thereof, and thereby depriving said owner and said Appellant of their and its property, without due process of law, in contravention of the Constitution of the United States and of the Fourteenth Amendment thereof.

Point 3. That said Court of Appeals of Maryland erred in not holding that no value can be given to the capital stock of said Appellant in excess of the value of the real estate and chattels, real or personal, for assessment, because such excess would include in such assessment the value of the franchise rights of the corporation, granted to it under the license of the Federal Power Commission, and such value is not subject to assessment for taxation by the State of Maryland, or any political subdivision thereof, because said Appellant under said license is a Federal Agent and instrumentality to improve the navigation upon a navigable river, which is a highway of interstate commerce.

B

Parts of the record as filed in this Court, which it hereby designates as necessary to be printed by the Clerk, for the consideration of said points and the hearing of the above entitled case.

No.	Titles of the Parts of the Record	Record page
1.	Appellant's capital stock report to the State Tax Commission, and ownership of all the capital stock of Appellant by Philadelphia Electric Power Company, a corporation of Pennsylvania	32–38
2.	Tentative assessment by State Tax Commission of all the capital stock of said Appellant against the Appellant, to be charged up against the non-resident owner	20
3.	Protest of said Appellant against said tentative assessment	21–22

[fol. 115] 4. Requests or Prayers to the State Tax Commission, for its rulings of law 8–10
and rejection of said Prayers, except
Prayer No. 2, as modified, being Exhibit A to Appellant's Petition for Appeal 10
5. Federal License, (for copy see Record No. 38 pa. 443-467) 73
6. Order of State Tax Commission making its assessment final, as of January 1st, 1929, being Appellant's Exhibit B to its Petition for Appeal 10–11
7. Petition and Appeal of Appellant to the Circuit Court for Harford County, from said Commission's final Order of Assessment, and Order of Court thereon, and Exhibits A and B aforesaid 4–8
8. Motion to dismiss Appellant's appeal to the Circuit Court for Harford County 79–80
9. Petition and Opinion, January 6th, 1930, of Supreme Court of the United States in Farmers Loan and Trust Company vs. Minnesota, as Exhibit of Appellant to the Circuit Court for Harford County for a rehearing of said Appeal, because of the important Federal questions involved, of the power of the State of Maryland to tax the non-resident owner of stock of a Maryland corporation, and Order of Court thereon, granting rehearing 80–82
10. Final Order of the Circuit Court for Harford County, affirming assessment of the State Tax Commission 83
11. Bill of Exceptions of Appellant 83–84
12. Appeal and Affidavit to the Court of Appeals of Maryland, from said Order of the Circuit Court for Harford County, affirming the Order of the State Tax Commission 84
13. Opinion of the Court of Appeals of Maryland
14. Petition for appeal to the Supreme Court of the United States, and Order of Chief Judge of the Court of Appeals of Maryland, allowing said appeal .....
15. Assignment of Errors thereon .....

[fols. 116 & 117] 16. Copy of Appellant's bond and approval by said Chief Judge.....
17. Original Citation to Appellee and Return of Service.....
18. Præcipe and Notice to Appellee that Appellant will require the Clerk of the Court of Appeals to certify to the Clerk of the Supreme Court the entire printed record in said suit, and admission of service by attorneys for appellee.

Wm. Clarke Mason, S. A. & F. R. Williams, Attorneys for Appellant.

Service of the above points to be relied on and designation of parts to be printed, upon the Appellee admitted, this 20 day of August, 1930, and copy left with me.

Thos. H. Robinson, C. H. MacNabb, R. H. Archer, Attorneys for Appellee.

[fol. 118] [File endorsement omitted.]

[fol. 119] IN SUPREME COURT OF THE UNITED STATES

DESIGNATION OF ADDITIONAL PARTS OF RECORD TO BE PRINTED —Filed Aug. 29, 1930

The above Appellee hereby designates as necessary to be printed by the Clerk for the consideration of this case the following parts of the Record, in addition to those designated by the Appellant:

1. Insert: Pages 12-19, inclusive, of the Record.
2. " Pages 26, 27 and 28 of the Record, leaving out the part of the affidavit on page 28.
3. " The part of page 31 which includes Exhibit "B".
4. " Page 45, starting with the testimony of Jesse V. Sealy, down to and including the part of page 79 to the words on the middle of the page, "testimony closed."
5. The Appellee objects to inserting in this Record the Federal license granted the Susquehanna Power

Company, which is not a matter of record in this case, but under paragraph 5 of Appellant's designation of the parts of the Record to be printed it asks that the same be copied from the Record No. 38, because to print the same would be irregular and improper.

6. The Appellee objects to inserting in this Record the opinion of the Supreme Court of the United States in Farmers Loan & Trust Company vs. Minnesota, because to print the same would be irregular and improper.

Thos. H. Robinson, Charles H. MacNabb, Robert H. Archer, Attorneys for Appellee.

Service of the above notice and præcipe admitted this 28th day of August, 1930.

Wm. C. Mason, S. A. & F. R. Williams, Attorneys for Appellant.

[fol. 120] [File endorsement omitted.]

Endorsed on cover: File No. 35291 Maryland Court of Appeals. Term No. 369. The Susquehanna Power Company, Appellant, vs. State Tax Commission of Maryland. Filed August 21, 1930. File No. 35291.